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Supreme Court, U.S.
FILED

98 951 DEC 10 1998

No. __________ OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

KENDALL H. BREEDLOVE,
Petitioner

v.

SKY BRYCE ASSOCIATION, INC., *et al.*, and
THE COMMONWEALTH OF VIRGINIA
Respondents

KENDALL H. BREEDLOVE,
Petitioner

v.

JAMES J. MIHALIK, *et al.*,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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127pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the federal courts below violate the Fifth Amendment's Due Process Clause, or deny Petitioner equal protection under law or deny procedural due process, either by judicial error, or by judicial bias, or by actual judicial malice, or by criminal activities of federal court employees, including falsification of the federal court records on appeal in the instant two actions?

2. Are Petitioner's allegations in either of the complaints in each of the two instant combined cases — that defendants in each case "acted under color of state law" and that defendants' actions in each case constituted "state action," with defendants' **lawful** invocation of state law alleged in one case and with defendants' **unlawful** invocation of state law alleged in the other case —

(a) sufficient to support a cause of action for declaratory relief as to the consitutionality of the Virginia property owners association lien law, *Virginia Code (1950)*, as amended, *§55-514* through *§55-516*, and

(b) sufficient to support a cause of action for legal relief against defendants under 42 USC § 1983?

3. Does the Virginia property owners association lien law (*i.e., Virginia Code (1950)*, as amended, *§55-514 - §55-516*), *on its face*, violate the Fourteenth Amendment's Due Process and Equal Protection Clauses, or Article I, § 11, of the Virginia Constitution, or the U.S. Supreme Court's holdings as to liens and attachments being subject to due process strictures in *Connecticut v. Doehr*, 501 U.S. 1, 115 L.Ed.2d 1, 111 S.Ct. 2105 (1991) or in *United States v. Good Real Property*, 501 U.S. —, 126 L.Ed.2d 491, 114 S.Ct. 492, 500-501 (1993)?

4. Do Petitioner's counts IV and V in the *Sky Bryce* case state causes of action either for declaratory relief under 28 USC §2201 as to constitutionality of the Virginia property owners association lien law, or for legal relief under common law for constitutional tort?

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(2) a Conspiracy To Commit Offenses Against the United States and To Defraud United States Courts, in violation of 18 USC §371, To Cover-up Criminal Acts —

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IN THE
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KENDALL H. BREEDLOVE, Petitioner

v.

SKY BRYCE ASSOCIATION, INC., *et al.*, and
THE COMMONWEALTH OF VIRGINIA
Respondents

KENDALL H. BREEDLOVE, Petitioner

v.

JAMES J. MIHALIK, *et al.*, Respondents[1]

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

Kendall H. Breedlove, the Petitioner in this appeal, respectfully prays that a *writ of certiorari* issue to review the judgments of the United States Court of Appeals for the Fourth Circuit, entered in the above-titled case on July 21, 1998, and September 11, 1998.

OPINIONS BELOW

1. The July 21, 1998, decision of the Fourth Circuit court of appeals affirmed the lower court's dismissal of Petitioner's lawsuit in the entirety. This July 21, 1998, *opinion* is one of the decisions appealed herein to the U.S. Supreme Court and the July 21, 1998, *opinion* is reprinted as Appendix Exhibit 1, at pages A2-A4.

2. On its face, the July 21, 1998, *opinion* fails to set forth that the Fourth Circuit court of appeals discharged its

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[1] For the complete list of parties defendant, see the caption of the Fourth Circuit Court's July 21, 1998, *memorandum opinion* reprinted as Appendix Exhibit 1, at page A-2 hereof.

mandatory, statutory duties under 28 USC §2403 (b), but rather denied the Petitioner's motion for 28 USC §2403 (b) certification and notification in the July 21, 1998, *opinion*.

3. On its face, the July 21, 1998, *opinion* sets forth denial of Petitioner's "Sworn Motion for the Fourth Circuit Court of Appeals to Cause the Correction and the Certification of Each of the False, Tampered, Incomplete, Uncertified Records on Appeal from the Federal District Court, in Each of the Two Instant Appeals," dated July 1, 1998.

4. The September 11, 1998, decision of the Fourth Circuit Court of Appeals denied Petitioner's *Petition for Rehearing*, dated July 1, 1995. This September 11, 1998, *order* is one of the decisions appealed herein to the U.S. Supreme Court and the September 11, 1998, *order* is reprinted as Appendix Exhibit 2, at page A5.

5. On its face, the September 11, 1998, *order* fails to set forth the written determinations required by the U.S. Supreme Court's holding in *Coleman v. Thompson*, 501 U.S. —, 115 L.Ed.2d 640, 664, 111 S.Ct — (1991), that the denial of the *Petition for Rehearing*, letting stand the July 21, 1998, affirmance of dismissal decision, not on a fair and substantive basis, is a decision which, *itself*, does not abridge any constitutional rights.

6. On its face, the September 11, 1998, *order* fails to set forth that the Fourth Circuit Court discharged its mandatory, statutory duties for 28 USC §2403 (b) certification and notification invoked by the Petitioner's challenge to the constitutionality of the Virginia property owners association lien law, contained in the *Petition for Rehearing*, as those duties relate to the *Mihalik* case.

JURISDICTION

The judgment of the U.S. Court of Appeals for the Fourth Circuit, denying Petitioner's timely-filed *Petition for Rehearing*, dated August 4, 1998, was entered September 11, 1998. The jurisdiction of this Court is invoked pursuant to 28 USC §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment of the United States Constitution, as follows:

> "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws**."

And the Fifth Amendment of the United States Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation."

Also involved is Article I, § 11, of the Virginia constitution:

> "That **no person shall be deprived of his life, liberty, or property without due process of law**; ... that in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. * * * "

Also involved are Virginia's property owners association lien statutes, *Virginia Code (1950)*, as amended, *§55-514* through *§55-516*.

STATEMENT OF THE CASE

1. Petitioner Breedlove suffered significant deprivations of constitutionally-protected rights resulting from private individuals, Mihalik, *et al.*, and Sky Bryce Association, Inc., *et al.*,

filing—under Virginia's property owners association lien law—two sets of two property owner association liens (two years apart) — one set as ancillary processes, and one set as judicial processes — for prejudgment attachment, without constitutional due process notice and without opportunity to be heard before the liens attached. In the *Mihalik* case, after filing its two liens, the association group sued Breedlove separately under action in debt for the selfsame claims as in the liens. Neither association group sued to enforce any of the four liens.

2. This appeal comes on two combined cases, each brought in whole or in part under the Civil Rights' Act, 42 USC §1983.[2]

3. Each case alleges the elements of a cause of action under 42 USC §1983, for deprivation of significant property rights, of due process, and of equal protection under law in a pre-judgment context, with a notable distinction: the *Mihalik* case alleged the **unlawful** invocation — by the first set of defendants — of the Virginia Property Owners Association lien law (Virginia Code 1950, as amended, §55-514 through §55-516) to create two June 28, 1994, property owners association liens against Petitioner, as named lienee; while the *Sky Bryce* case alleged the **lawful** invocation — by a second set of defendants — of the Virginia Property Owners Association lien law to create two June 28, 1996, property owners association liens against Petitioner, as named lienee, two years later.

4. In each case, Petitioner alleged explicitly:

a. that Defendants participated jointly with State officials in the creation of each of the two sets of property owners association liens against Breedlove;

b. that Defendants obtained significant aid from State officials;

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[2] The June 27, 1997, complaint in the *Sky Bryce* case sets forth five counts: three counts sought legal relief under 42 USC §1983 against defendants; one count sought declaratory relief under 28 USC §2201, as to constitutionality of the Virginia property owners association lien law; and one count sought legal relief under common law against defendants for constitutional tort.

c. that Defendants were willful participants in the joint activity with the State officials; and

d. that Defendants were persons "acting under color of state law," for purposes of 42 USC §1983, and were within the construction and meaning of 42 USC §1983.

5. In each case, Petitioner's complaint pleaded a challenge to the constitutionality of the Virginia Property Owners Association lien law.

6. Thus, a key issue is whether Petitioner's allegations in either of the complaints in each of the two instant combined cases — that defendants "acted under color of state law" and that defendants' actions constituted "state action," with defendants' **lawful** invocation of state law alleged in one case and with defendants' **unlawful** invocation of state law alleged in the other case — are:

(a) sufficient to support a cause of action for declaratory relief as to the constitutionality of the Virginia property owners association lien law, and

(b) sufficient to support a cause of action for legal relief against defendants under 42 USC § 1983.

7. It appears to Petitioner that in the *Mihalik* case, Breedlove's allegations will support an action for declaratory relief as to the constitutionality of the Virginia property owners association lien law, at a minimum; while in the *Sky Bryce* case, Breedlove's allegations will support an action for declaratory relief as to the constitutionality of the Virginia property owners association lien law, and an action for legal relief against defendants for damages.

8. Another issue is whether there was criminal interference in Petitioner's litigation by third-parties, particularly including officers and employees of the United States and of United States courts, and the extent to which these individuals: (a) compromised the fairness and impartiality of the proceedings before the U.S. District Court for the Western District of Virginia and before the U.S. Court of Appeals for the Fourth Circuit and (b)

obstructed the due administration of justice. Petitioner alleges that he has been denied fair and impartial hearing of his cases at both the district court and appellate court levels.

REASONS FOR GRANTING THE WRIT

I. *Obstruction of Justice in Both Cases Through A Pattern of Judicial Conduct Demonstrating a Criminal Conspiracy (1) To Maintain Enforceability of Unconstitutional Virginia Law and (2) To Evade Federal Constitutional Review, Manifesting Itself as:*

(1) a Criminal Conspiracy Against the Rights of Citizens, in violation of 18 USC §241, To Oppress Petitioner in the Free Exercise of his Federal Civil and Constitutional Rights; and

(2) a Conspiracy To Commit Offenses Against the United States and To Defraud United States Courts, in violation of 18 USC §371, To Cover-up Criminal Acts —

Resulting in Denial of Procedural Due Process To Petitioner, as Appellant, when an Objective of the Criminal Conspiracy Became Denial of Petitioner's Federal Constitutional Rights and Federal Civil Rights.

A. *Overview—*

1. Events in the two instant actions brought by Petitioner, as plaintiff, demonstrate the existence of a criminal conspiracy, the purpose of which is to evade federal constitutional review of Virginia lien laws and to maintain the enforceability of Virginia lien laws, even though those lien laws are known by federal judges and Virginia officers to be repugnant to the Fourteenth Amendment of the U.S. Constitution. This conspiracy manifested itself in two ways:

(a) as a conspiracy against the rights of citizens, in violation of 18 USC §241, with the objective of oppressing Petitioner Breedlove in the free exercise of his federal civil and constitutional rights through obstruction of justice in Breedlove's litigation before federal courts; and

(b) as a conspiracy to commit offenses against the United States and to defraud United States courts, in violation of 18

USC §371, with the objectives of covering-up criminal actions by the conspirators and their agents and of defrauding federal appellate courts as necessary to assure the dismissal of Breedlove's litigation, without any adjudication on the constitutional challenges raised by Breedlove as to Virginia lien laws.

2. The conspirators directed their unfair, unlawful, corrupt, and felonious efforts against Petitioner Breedlove and against his litigation to thwart the instant two actions, which raised constitutional challenges to the Virginia property owners association lien law. Breedlove alleges that the conspirators targeted Breedlove's litigation for unfair, unlawful, corrupt, and criminal acts to prevent fair hearing or trial on the merits and thus, to evade any declaration on the merits of Petitioner's claims of unconstitutionality of the Virginia property owners association lien law, by the federal district court for the Western District of Virginia or by the Fourth Circuit Court of Appeals.

3. This conspiracy converted into a conspiracy to deny Petitioner's federal constitutional rights and federal civil rights, particularly including Petitioner's right to testify in a federal court proceeding.

4. Petitioner alleges that one or more conspirators or executive agents of the conspiracy have interfered with the instant two lawsuits and instant two appeals, have obstructed justice, have caused prejudice to Petitioner's litigation, and Petitioner has suffered harm as a direct and proximate consequence of their acts.

B. Conspiratorial Overt Acts—

1. To oppress Petitioner in the instant cases and to cover-up criminal acts, the conspirators targeted Breedlove's litigation and employed one or more violations of Title 18 of the United States Code as overt acts implementing the conspiracy.[3]

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[3] Petitioner alleges the conspirators employed the following illegal means in overt acts, in furtherance of their conspiracy:

- false statement of material fact by a federal judge, in violation of 18 USC §1001;

C. Particular Criminal Interference—

1. In particular, Petitioner alleges criminal interference in the each of the two cases separately and in the combined cases by 10 or more persons, most of whom are officers or employees of the United States and of Federal courts, including:

a. The Honorable B. Waugh Crigler, U.S. Magistrate Judge, U.S. District Court for the Western District of Virginia, charged with violations of the following statutes:

- Conspiracy against the rights of citizens, 18 USC §241
- Concealment, removal, or destruction of federal court record, 18 USC §2071
- Tampering with a witness, victim, or informant, 18 USC §1512
- Misprision of felony, 18 USC §4.

Breedlove lodged complaints of violation of Title 18 of the United States Code previously with the Honorable James H. Michael, Jr., District Judge in four separate documents.[4]

- falsification of federal court records by federal district court employees, in violation of 18 USC §1001;
- falsification of federal court records by federal appellate court employees, in violation of 18 USC §1001;
- removal, concealment, or destruction of federal district court records by federal district court employees, in violation of 18 USC §2071;
- removal, concealment, or destruction of federal appeals court records by federal appellate court employees, in violation of 18 USC §2071;
- tampering with a witness, victim, or informant, in violation of 18 USC §1512;
- obstruction of justice before courts, in violation of 18 USC §1503;
- misprision of felony by four federal judges, in violation of 18 USC §4;
- Government seals wrongfully used and instruments wrongfully sealed, in violation of 18 USC §1017;
- falsified official certificates or writings, in violation of 18 USC §1018;
- removal, concealment, or destruction of U.S. Postal Service certified-mail records, in violation of 18 USC §2071; and
- fraud on the Fourth Circuit Court and on Petitioner Breedlove, in violation of 18 USC §1001;
- corrupt abuse of the power of federal office.

[4] ***Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Violations,*** dated July 8, 1996, in ***Breedlove v. Mihalik, et al.***, at pages 4, 5-6, 8, 23, thereof.

b. Mr. Morgan E. Scott, Jr., Clerk of the Court, U.S. District Court for the Western District of Virginia, charged with violations of the following statutes:

- Concealment, removal, or destruction of federal court record, 18 USC §2071
- Misrepresentation of material fact by concealment (making false statements), 18 USC §1001
- Conspiracy against the rights of citizens, 18 USC §241
- Obstruction of justice, 18 USC §1503 (8 counts)
- Tampering with a witness, victim, or informant, 18 USC §1512 (3 counts).

Plaintiff's Memorandum in Opposition to Defendants Sky Bryce Association, Inc., and L.E. Hoole's Motion to Dismiss, dated September 18, 1997, in *Breedlove v. Sky Bryce Association, Inc., et al.*, at page 6 thereof.

Plaintiff's Motion to the District Judge [Michael], *as Trial Judge, to Forbid Any Hearings before or participation by U.S. Magistrate B. Waugh Crigler*, dated September 29, 1997, in *Breedlove v. Sky Bryce Association, Inc., et al.*, at pages 1-2, 3, thereof. Magistrate Crigler refused to recuse himself and he, *himself*, ruled on and denied Breedlove's motion for the Magistrate to recuse himself, even though the motion was addressed to the district judge.

Plaintiff's Appeal to the Senior District Judge [Michael], *as a Federal Civil Right under 28 USC §636(b)(1), of the Magistrate's Order Entered October 10, 1997, and of Magistrate B. Waugh Crigler's Refusal to Recuse Himself on the Basis of Bias, Appearance of Bias, and Criminal Charges Lodged Against Magistrate by Plaintiff in the Instant Case*, dated October 17, 1997, in *Breedlove v. Sky Bryce Association, Inc., et al.*, at pages 4-8 thereof.

On October 7, 1997, at a "pre-trial conference," Magistrate Crigler ordered Breedlove not to file any new motions or memoranda until after the Magistrate-scheduled November 14, 1997, hearing on Defendants' three motions to dismiss. Magistrate Crigler stated that the hearing was being set for November 14, 1997, so that Petitioner could appeal the Magistrate's October 10, 1997, order (memorializing the Magistrate's October 7, 1997, verbal refusal to recuse himself and prohibition of pleading) to the district judge. At the time of the Magistrate's order of prohibition, there were still defendants' pleadings within the pleading cycle, and the Magistrate granted one set of defendants permission to file a new pleading responding to a Petitioner's motion for the court to determine possible conflict of interest by a defense counsel, while prohibiting Petitioner to file any rebuttal pleading.

Judge Michael failed to rule upon or dispose of Breedlove's *appeal of the Magistrate's October 10, 1997, order* or to cause criminal investigation of the criminal charges against Magistrate Crigler contained therein. Clerk of the Court Morgan E. Scott, Jr., failed to record any memorandum entry in the *civil docket summary* to document the proceedings of the October 7, 1997, pre-trial conference, and thus, concealed the material fact of the Magistrate holding the October 7, 1997, pre-trial conference. The defendants' three jurisdictional forms, executed in the affirmative, consenting to the jurisdiction of the Magistrate for the October 7, 1997, pre-trial were concealed, removed, or destroyed from the court's official record.

Breedlove lodged complaints of violation of Title 18 of the United States Code previously with the Honorable James H. Michael, Jr., District Judge and lodged sworn federal charges with the Honorable J. Harvie Wilkinson, III, Chief Judge, U.S. Court of Appeals for the Fourth Circuit.[5]

c. Ms. Dee Sims, a deputy clerk, U.S. District Court for the Western District of Virginia, charged with violations of the following statute:

- False statements, 18 USC §1001 (3 counts).

Breedlove lodged sworn federal charges lodged previously with the Honorable J. Harvie Wilkinson, III, Chief Judge, U.S. Court of Appeals for the Fourth Circuit.[6]

d. The Honorable James H. Michael, Jr., Senior District Judge, U.S. District Court for the Western District of Virginia, charged with violations of the following statutes:

- Making false statement, 18 USC §1001 (1 count)
- Employing false statement, 18 USC §1001 (1 count)
- Misprision of felony, 18 USC §4 (1 count)

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[5] *Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Violations*, dated July 8, 1996, in *Breedlove v. Mihalik, et al.*, at pages 15, 21, 21-22, 23, thereof.

Plaintiff's Memorandum in Opposition to Defendants Sky Bryce Association, Inc., and L.E. Hoole's Motion to Dismiss, dated September 18, 1997, in *Breedlove v. Sky Bryce Association, Inc., et al.*, at page 6 thereof.

Plaintiff's Motion to the District Judge [Michael], *as Trial Judge, to Forbid Any Hearings before or participation by U.S. Magistrate B. Waugh Crigler*, dated September 29, 1997, in *Breedlove v. Sky Bryce Association, Inc., et al.*, at page 3, thereof.

Letter from Breedlove to the Honorable J. Harvie Wilkinson, III, Chief Judge, dated December 2, 1998, subject: "Criminal charges lodged against the Clerk of the Court, the Deputy Clerk of the Court, and a deputy clerk of the U.S. District Court for the Western District of Virginia, Harrisonburg Division," enclosing 19 sworn criminal charges and supporting *affidavits*. Sent by Federal Express, with delivery confirmed.

[6] Letter from Breedlove to the Honorable J. Harvie Wilkinson, III, Chief Judge, dated December 2, 1998, subject: "Criminal charges lodged against the Clerk of the Court, the Deputy Clerk of the Court, and a deputy clerk of the U.S. District Court for the Western District of Virginia, Harrisonburg Division," enclosing 19 sworn criminal charges and supporting *affidavits*. Sent by Federal Express, with delivery confirmed.

- Conspiracy against the rights of citizens, 18 USC §241 (1 count)
- Conspiracy to commit offenses against the United States or to defraud United States courts, 18 USC §371.

(Federal charges lodged herewith in Appendix Exhibit 20.);

e. One or more persons employed by the U.S. Postal Service at the Harrisonburg Post Office, including Ms. Kay T. Shirkey, charged with violations of the following statute:

- Concealment, removal, or destruction of Postal Service record, 18 USC §2071.

Breedlove lodged complaint of violation of Title 18 of the United States Code previously with the Honorable James H. Michael, Jr., District Judge and lodged sworn federal charges with Mr. Kenneth J. Hunter, Chief Postal Inspector, U.S. Postal Service.[7]

f. Ms. Patricia S. Connor, Clerk of the Court, U.S. Court of Appeals for the Fourth Circuit, charged with violations of the following statutes:

- False statements, 18 USC §1001 (1 counts)
- Concealment, removal, or destruction of federal court records, 18 USC §2071 (2 counts)
- Tampering with a witness, victim, or informant, 18 USC §1512 (1 count)
- Obstruction of justice, 18 USC §1503 (1 count).

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[7] *Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Violations*, dated July 8, 1996, in *Breedlove v. Mihalik, et al.*, at pages 12, 14, thereof.

Breedlove's letter complaint and criminal information *affidavit* to Mr. Kenneth J. Hunter, Chief Postal Inspector and Inspector General of the U.S. Postal Service, dated September 14, 1996, subject, "Letter and criminal information *affidavit* number USPS 3, charging one or more Postal Service officers or employees with violations of title 18 of the United States Code, in particular for violation of 18 USC §2071, for concealment, removal or destruction of Government records," at page 2 thereof. Breedlove sent this letter by certified mail, with delivery receipted for by signature on September 16, 1996. Chief Postal Inspector Hunter failed ever to acknowledge or to answer this letter. There is no evidence of any criminal investigation having been undertaken.

Breedlove lodged sworn federal charges previously with the Honorable J. Harvie Wilkinson, III, Chief Judge, U.S. Court of Appeals for the Fourth Circuit and lodged them again in civil appeal before the Fourth Circuit Court in combined C.A.4 docket nos. 98-1063 and 98-1064, the instant cases.[8]

g. Ms. Patricia Hensley, Deputy Clerk of the U.S. District Court for the Western District of Virginia, charged with violations of the following statute:

– Concealment, removal, or destruction of federal court records, 18 USC §2071 (4 counts).

Breedlove lodged sworn federal charges previously with the Honorable J. Harvie Wilkinson, III, Chief Judge, U.S. Court of Appeals for the Fourth Circuit.[9]

h. Ms. Cheryl M. Williamson, a deputy clerk, U.S. Court of Appeals for the Fourth Circuit, charged with violations of the following statutes:

- False statements, 18 USC §1001 (3 counts)
- Concealment, removal, or destruction of federal court records, 18 USC §2071 (2 counts).

Breedlove lodged sworn federal charges previously with the Honorable J. Harvie Wilkinson, III, Chief Judge, U.S. Court of Appeals for the Fourth Circuit and lodged them again in civil appeal before the Fourth Circuit Court in combined C.A.4 docket nos. 98-1063 and 98-1064, the instant cases.[10]

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[8] Letter from Breedlove to the Honorable J. Harvie Wilkinson, III, Chief Judge, dated November 5, 1998, subject: "Criminal charges lodged against the Clerk of the Court, and a deputy clerk of the U.S. Court of Appeals for the Fourth Circuit," enclosing seven sworn criminal charges and supporting *affidavits*. Sent by Federal Express, with delivery confirmed.

[9] Letter from Breedlove to the Honorable J. Harvie Wilkinson, III, Chief Judge, dated December 2, 1998, subject: "Criminal charges lodged against the Clerk of the Court, the Deputy Clerk of the Court, and a deputy clerk of the U.S. District Court for the Western District of Virginia, Harrisonburg Division," enclosing 19 sworn criminal charges and supporting *affidavits*. Sent by Federal Express, with delivery confirmed.

[10] Letter from Breedlove to the Honorable J. Harvie Wilkinson, III, Chief Judge, dated November 5, 1998, subject: "Criminal charges lodged against the Clerk of the Court, and a deputy clerk of the U.S. Court of Appeals for the

i. The Honorable Paul V. Niemeyer, Circuit Judge and panel member for the U.S. Court of Appeals for the Fourth Circuit, will be charged with violations of the following statutes:

- Employing false statement, 18 USC §1001
- Conspiracy against the rights of citizens, 18 USC §241
- Misprision of felony, 18 USC §4.

(Federal charges will be lodged separately with the Court.);

j. The Honorable Clyde H. Hamilton, Circuit Judge and panel member for the U.S. Court of Appeals for the Fourth Circuit, will be charged with violations of the following statutes:

- Employing false statement, 18 USC §1001
- Conspiracy against the rights of citizens, 18 USC §241
- Misprision of felony, 18 USC §4.

(Federal charges will be lodged separately with the Court.);

k. The Honorable Kenneth K. Hall, Circuit Judge and panel member for the U.S. Court of Appeals for the Fourth Circuit, charged with violations of the following statutes:

- Employing false statement, 18 USC §1001

Fourth Circuit," enclosing seven sworn criminal charges and supporting *affidavits.* Sent by Federal Express, with delivery confirmed.

Appellant's [Breedlove's] *Motion for Judicial Notice* [of Breedlove's letter to Chief Judge Wilkinson and the sworn criminal charges enclosed with the letter], *in accordance with Local Rule 40(d), as Ancillary to the Filing of an Application for Writ of Certiorari to the U.S. Supreme Court,* dated November 6, 1998, filed in *Breedlove v. Sky Bryce Association, Inc., et al.* (4th Circuit, C.A.4 combined docket nos. 98-1063 and 98-1064), in the attachments thereto.

With this motion, Breedlove filed a *praecipe and notice* which noticed the motion for November 20, 1998, ruling on the written pleadings, without oral arguments.

The review panel of the Fourth Circuit Court failed to rule on Breedlove's *motion for judicial notice* and covered-up the material fact of its filing with the Court in their *order* entered November 20, 1998. The November 20, 1998, *order* stated falsely that Breedlove's *praecipe and notice* had contained a request to recall and stay the Court's mandate, pending review by the U.S. Supreme Court. The *order* denied this request. Breedlove's *praecipe and notice* contained no such request to recall and stay the mandate. The November 20, 1998, *order* made no mention whatsoever of Breedlove's November 6, 1998, motion, and failed to rule on or dispose of that motion on the record.

- Conspiracy against the rights of citizens, 18 USC §241
- Misprision of felony, 18 USC §4.

(Federal charges will be lodged separately with the Court.);

1. John Doe, person or persons unknown at present.

All of the above criminal charges remain pending and uninvestigated.

2. The combined criminal acts of these 10 or more people constitute a pattern of criminal abuse and oppression directed against Petitioner and Petitioner's litigation, perpetrated willfully, knowingly, and with wanton disregard for Petitioner's rights, with the particular intent of denying to Petitioner the free exercise of: (1) his federal constitutional right to testify before a federal court proceeding, (2) his federal civil rights pursuant to 28 USC § 1343 a (3), 28 USC § 1331, and 28 USC § 1254, and (3) his federal constitutional rights to Due Process and Equal Protection under law, protected under the Fifth Amendment and the Fourteenth Amendment of the U.S. Constitution.

D. Factual pattern of abuse and oppression—

1. The facts in these combined cases, both at the trial level and at the appellate level: (1) demonstrate a pattern of abuse constituting oppression of a citizen; (2) demonstrate crimes against the United States and against United States courts; and (3) demonstrate overt acts in furtherance of the criminal conspiracy — either acts oppressing a citizen or covering-up prior criminal acts; and (4) demonstrate that Breedlove's constitutional rights of due process were violated.[11]

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[11] Highlighted facts are set forth in the appendix hereto, in the following exhibits:

- Appendix Exhibit 15 as to the trial court proceeding in the *Mihalik* case;
- Appendix Exhibit 16 as to the trial court proceeding in the *Sky Bryce* case;
- Appendix Exhibit 17 as to the appellate court proceeding in the *Mihalik* case;
- Appendix Exhibit 18 as to the appellate court proceeding in the *Sky Bryce* case; and

2. Petitioner is reporting these criminal activities to demonstrate the lengths to which the conspirators went to evade any constitutional review of the constitutionality of the Virginia property owners association lien law.

3. The collection of pertinent facts set forth in the appendix demonstrates the pervasiveness of the unfair dirty tricks, unlawful acts, and criminal activities directed against Breedlove by the conspirators — in each of the instant two cases, at both the trial-court level and at the appellate level. The facts also demonstrate the intensity and commitment of the conspirators in pursuing a common purpose of preventing any constitutional review of the Virginia property owners association lien law — by any means thought necessary, including criminal acts.[12]

4. The instant combined cases need to be remanded to an impartial forum for *de novo* hearing, outside the Fourth Circuit (the Petitioner suggests the District of Columbia, for the convenience of the litigants), in that decisions rendered by federal judges in these cases at both the trial-court level and at the appellate level are not the unbiased rulings of impartial and fair jurists, but instead are the overt acts of criminal conspirators, charged herein, in a conspiracy against the rights of citizens, in violation of 18 USC § 241 and in a conspiracy to commit offenses against the United States and to defraud United States courts, in violation of 18 USC §371.

II. The Fourth Circuit Court of Appeals committed prejudicial error, denied procedural due process, and denied equal protection under law by violating 28 USC §2403(b) and, thus,

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- Appendix Exhibit 19 as to the appellate court proceeding in the combined Mihalik and *Sky Bryce* cases.

[12] If there had been only one or two instances of such conduct, or perhaps, in only one case, or, perhaps, before only one court, such failure of procedural due process, impropriety, or illegal act might perhaps be shuttled aside as an explainable fluke. However, the pattern of abuse and oppression demonstrated in each of the instant two cases: (1) by the multiple occurrences of unfair dirty tricks, unlawful acts, and criminal activities directed against Breedlove — over a period spanning two and a half years — and (2) by the federal district judge condoning these unfair, unlawful, and illegal acts, cannot be explained away as innocuous, but demonstrates concerted conspiratorial action. Such a conclusion is reinforced by the actions of the federal appellate court review-panel circuit judges endorsing and participating in the cover-up.

failed to satisfy the conditions precedent necessary to confer upon the Court its actual jurisdiction—

1. The Fourth Circuit Court's decision in the instant *Mihalik* civil rights appeal violated 28 USC §2403(b), by **refusing to certify** the constitutional challenge, by **refusing to notify** the Virginia Attorney General, and by **denying** Petitioner's written motion for certification and notification under 28 USC §2403(b).

2. In so doing, the Court: (a) failed to satisfy its own jurisdictional requirements; (b) deprived Petitioner wrongfully and permanently of his entitlement to the procedures of 28 USC §2403(b) without Due Process—notice and an opportunity to be heard; (c) denied Petitioner procedural due process; and (d) denied Petitioner Equal Protection under law. Thus, the Court's affirmance of the dismissal decision, *itself*, without fulfilling all jurisdictional requirements, deprived Petitioner of his federal Constitutional rights.

III. *The Fourth Circuit Court of Appeals committed prejudicial, reversible error, denied procedural due process, and denied equal protection under law by overlooking both material law and fact in its decision.*

A. *The Fourth Circuit Court committed prejudicial error, denied procedural due process, and denied equal protection under law by its conflict with Fifth Circuit's decision—*

1. The Fifth Circuit Court of Appeals, in *Folsom Investment Co. v. Moore* (681 F.2d 1032, at 1037, 5th CCA, 1982), held to the effect that when unconstitutionality of a state attachment procedure is alleged, as in the Plaintiff's two *Complaints*, **the private party who set that prejudgment attachment scheme in motion is to be considered a state actor**.

2. The Fourth Circuit Court's decision: (1) ignored the application of *Folsom Investment Co. v. Moore, supra*, without commenting on it; (2) affirmed the lower court's rulings on defendants' acts "under color of state law;" and (3) in so doing contravened the Fifth Circuit's definition of "under color of state law."

3. Petitioner pleaded the explicit applicability of *Folsom* in his June 27, 1995, *complaint* at page 10; in his June 27, 1997, *complaint* at pages 27, 34, 39; and in his *petition for rehearing*, dated August 4, 1998, at pages 3-4 thereof.

4. The Fourth Circuit Court of Appeals did not distinguish *Folsom, supra*, or explain its rationale for ignoring the rationale set forth in *Folsom, supra*, so that the U.S. Supreme Court could have the benefit of the rationale of two federal circuit courts when the instant case is appealed to the U.S. Supreme Court.

B. *The Fourth Circuit Court of Appeals committed prejudicial error, denied procedural due process, and denied equal protection under law by affirming the lower court's misapplication of the U.S. Supreme Court's holding in Lugar v. Edmondson Oil Co., 457 U.S. 922, 73 L.Ed.2d 482, 102 S.Ct. 2744 (1982), based upon* misrepresented *material fact.*

1. By the trial judge's November 13, 1997, *memorandum opinion*, the Honorable James H. Michael, Jr., Senior District Judge, as trial judge, misrepresented material fact in Note 1, on the first page of his November 13, 1997, *memorandum opinion*, in the *Sky Bryce* case, by stating that the two cases are "virtually identical," and concealed one material distinction: **lawful** versus **unlawful** application of the Virginia lien statute.[13]

2. **Lawful invocation** of a State statute — when that State statute is challenged subsequently for constitutionality — is one element of a cause of action under § 1983.[14]

3. In the *Keystone* case, even though the Keystone plaintiff had pleaded that the Floor Fashions defendant **misapplied** the Virginia statute, Judge Michael determined that there was a

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[13] This statement by Judge Michael, together with Judge Michael's reasoning in section II B, "Plaintiff's Claims Under 42 U.S.C. §1983," of the *memorandum opinion* concealed the material fact of a distinction between the two cases under appeal: the *Sky Bryce* case alleges that the defendants employed the Virginia property owner association lien law ***lawfully***, in 1996; while the *Mihalik* case alleges that the defendants employed the Virginia property owner association lien law ***unlawfully***, in 1994.

[14] *Keystone Builders v. Floor Fashions of Virginia*, 829 F.Supp. 181, 183, note 1, (W.D. Va. 1993) (Michael, J.), *citing Lugar v. Edmondson Oil Co.*, 457 U.S. at 942, 102 S.Ct. at 2756, 73 L.Ed.2d at 498-499, (1982), pleaded in Breedlove's June 27, 1997, *Sky Bryce* Complaint in Count I, at page 27.

cause of action for a declaratory relief on the Virginia attachment procedure and ruled on that procedure's constitutionality, in a formal, published *opinion*, even while holding that there was no cause of action under 42 USC §1983 for legal relief against the defendant.

Allegations set forth in the June 27, 1995, complaint in the Mihalik case (a 42 USC §1983 action)–

4. The Petitioner alleged in his June 27, 1995, *Mihalik* Complaint, paragraph 12, at page 4, the **unlawful exercise** of the Virginia statute by Defendants.[15]

5. The Petitioner alleged explicitly that Defendants acted under color of state law in his June 27, 1995, *Mihalik* Complaint, in the single count under 42 USC §1983; set forth in paragraphs 22 – 29d of the *Complaint*, at pages 8 — 10 thereof,

6. The Petitioner also alleged state action by joint participation, explicitly in his June 27, 1995, *Mihalik* Complaint, in paragraph 25, at page 8, to-wit: that "[t]he Defendants are parties who may fairly be said to be state actors, in that they acted together with or obtained significant aid from state officials."[16]

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[15] To-wit: "These two [June 28, 1994] POA liens are in violation of Virginia Code §55-516B, in that: (a) they make claim for more that only those assessments which became due in the one year immediately preceding the date on which the liens were filed, and (b) they make claim for 'accelerated assessments' due in July, 1994, for the period July, 1994, through July, 1995, not yet due as of the date of liening."

[16] a. Petitioner alleged explicitly that "... Defendants who, acting under color of unconstitutional state law and process (two liens created under the unconstitutional Virginia Property Owners Association Act, particularly Virginia Code §55-514 through §55-516) subjected the Plaintiff or caused the Plaintiff to be subjected (the Plaintiff being a citizen of the United States) to the deprivation of his rights, privileges, or immunities secured by the Constitution and laws of the United States, in that Defendants filed two Property Owners Association liens on June 28, 1994, as ancillary process for prejudgment attachment, against Plaintiff, as named lienee, which liens: * * * (c) were **unlawful** for not being in complaince with Virginia Code §55-516 for the cretion of liens ...." [June 27, 1995, ***Mihalik*** Complaint, paragraph 16, at page 5.]

b. Petitioner alleged explicitly that Defendants caused "Plaintiff to be deprived of one or more constitutionally-protected rights or entitlements by the Defendants' exercise of the right or privilege created by the Commonwealth of Virginia in unconstitutional Virginia Code §55-516, to

7. Despite the Petitioner's explicit allegations in the *Complaint* of "action under color of state law," and of "state action," Senior District Judge Michael stated, "Once again, defendants are not state actors by any stretch of the imagination," in the trial judge's July 1, 1996, *memorandum opinion* in the *Mihalik* case.

8. In so doing, Judge Michael either invaded the prerogatives of the jury to determine matters of fact, or made an incorrect conclusion, willfully and knowingly, as to a matter of law concerning state actors, when he knew or should have known the proper interpretation and application of *Lugar* to state actors, in that he had been the trial judge in the *Keystone* case, who wrote the *Keystone* memorandum opinion.

Allegations set forth in the June 27, 1997, complaint in the Sky Bryce case (a five-count complaint: three counts under 42 USC §1983, one count under 28 USC §2201, and one count under common law)—

9. The Petitioner, as plaintiff, alleged in his June 27, 1997, *Sky Bryce* Complaint, Count I, paragraph 1, at page 22, the **lawful exercise** of the Virginia statute by Defendants.[17]

10. The Petitioner, as plaintiff, alleged explicitly that Defendants acted under color of state law in his June 27, 1997, *Sky Bryce* Complaint, in Counts I - III (the three counts under 42 USC §1983); set forth in Count I, paragraphs 5 – 15c of the

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create liens for Property Owners Association dues and assessments." [June 27, 1995, *Mihalik* Complaint, at paragraph 24, page 8.]

c. Petitioner alleged explicitly that Defendants participated jointly with State officials in the creation of the two June 28, 1994 property owners association liens against Breedlove.

d. Petitioner alleged explicitly that Defendants obtained significant aid from State officials.

e. Petitioner alleged explicitly that Defendants were willful participants in the joint activity with the State officials.

f. Petitioner alleged explicitly that Defendants were persons "acting under color of state law," for purposes of 42 USC §1983, and were within the construction and meaning of 42 USC §1983.

[17] To-wit: "Defendants filed two Property Owners Association liens on June 28, 1996, as judicial process employed as a prejudgment remedy, for prejudgment attachment, against Plaintiff [Breedlove], as named lienee, which liens: (a) **were lawful** pursuant to Virginia Code §55-516 for the creation of liens …." [*Bold emphasis added by Petitioner.*] This allegation was incorporated by explicit references into Counts II and III.

Complaint, at pages 23 – 27 thereof, and incorporated by explicit references into Counts II and III.

11. The Petitioner also alleged state action by joint participation, explicitly in his June 27, 1997, *Sky Bryce* Complaint in Counts I - III (the counts under 42 USC §1983), to-wit: that the Defendants, as parties charged with the deprivations, may fairly be said to be state actors, set forth in Count I, in paragraphs 15 – 15c of the *Complaint*, at pages 26 – 27 thereof, and incorporated by explicit references into Counts II and III.[18]

12. Despite the Petitioner's explicit allegations in the *Complaint* of "action under color of state law," and of "state action," Senior District Judge Michael stated, "Once again, Sky Bryce and Mr. Hoole are not State actors by any stretch of the imagination," in the trial judge's November 13, 1997, *memorandum opinion* in the *Sky Bryce* case.

13. In so doing, Judge Michael either invaded the prerogatives of the jury to determine matters of fact, or made an incorrect conclusion, willfully and knowingly, as to a matter of law concerning state actors, when he knew or should have known the proper interpretation and application of *Lugar* to

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[18] a. Petitioner alleged explicitly that Defendants caused "Plaintiff to be deprived of one or more constitutionally-protected rights or entitlements by the Defendants **lawful exercise** of the right or privilege created by the Commonwealth of Virginia in Virginia Code §55-516 to create liens for Property Owners Association dues and assessments without providing constitutional Due Process." [June 27, 1997, *Sky Bryce* Complaint, Count I, at paragraph 7, page 24.]

b. Petitioner alleged explicitly that Defendants participated jointly with State officials in the creation of the two June 28, 1996 property owners association liens against Breedlove.

c. Petitioner alleged explicitly that Defendants obtained significant aid from State officials.

d. Petitioner alleged explicitly that Defendants were willful participants in the joint activity with the State officials.

e. Petitioner alleged explicitly that Defendants were persons "acting under color of state law," for purposes of 42 USC §1983, and were within the construction and meaning of 42 USC §1983.

f. Petitioner alleged explicitly that Defendants' actions were persons "acting under color of state law," for purposes of 42 USC §1983, and were within the construction and meaning of "state action," as interpreted by the federal district court for the Western District of Virginia, Judge Michael presiding, as stated in *Keystone Builders v. Floor Fashions of Virginia*, 829 F.Supp. 181, 183 (W.D. Va. 1993).

state actors, in that he had been the trial judge in the *Keystone* case, who wrote the *Keystone* memorandum opinion.

The trial court's error, committed willfully—

14. The federal district court failed to distinguish the contrasting allegations of Breedlove's June 28, 1995, and June 27, 1997, complaints — defendants' **unlawful invocation** versus **lawful invocation** of state law — in contexts pleaded as being **pre-judgment attachments**.

15. The Honorable James H. Michael, Jr., Senior District Judge, as trial judge, **misrepresented material fact** in his November 13, 1997, *memorandum opinion*, in Note 1, to-wit: "The instant case is virtually identical to that brought by plaintiff in *Breedlove v. Mihalik, et al.*, Civil Action No. 95-0055-H, (W.D. Va. July 1, 1996) (Michael, J.). * * * The 'substantive' claims remain identical."

a. Judge Michael next implied falsely that Breedlove had pleaded misapplication of state statute in each case.

b. Judge Michael next applied the incorrect judicial standard — the standard for use in instances of post-judgment attachment, as held by Judge Michael in *Keystone Builders v. Floor Fashions of Virginia*, 829 F.Supp. 181, 183, Note 1 (W.D. Va. 1993) — to the circumstances pleaded by Breedlove in the *Sky Bryce* case as being a context of pre-judgment attachment.[19]

c. Judge Michael failed to apply the standard for the pre-judgment attachment context, to-wit: " *Lugar* held, **in the pre-judgment attachment context,** that a private party's lawful invocation of procedures which later come under constitutional challenge ***does*** constitute state action for the purposes of that challenge." [*Keystone*, at 183, Note 1.]

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[19] "The court notes here that ***Lugar*** **held, in the pre-judgment attachment context, that a private party's lawful invocation of procedures which later come under constitutional challenge *does* constitute state action for the purposes of that challenge**. 457 U.S. at 942, 102 S.Ct. at 2756, 73 L.Ed.2d at 498-499. The Fourth Circuit has held in the *post*-judgment attachment context, that a private party's mere invocation of challenged procedures, without more, does not transform that party into a state actor. *Jones v. Poindexter*, 903 F.2d at 1011." [*bold emphasis added by Plaintiff to Keysone Builders v. Floor Fashions of Virginia, id.*, at 183, in note 1.]

Breedlove had read the *Keystone* case prior to drafting his June 27, 1997, *Sky Bryce* complaint and Judge Michael's holding in the *Keystone* case was pleaded explicitly and quoted in the complaint as legal authority for declaratory relief as to constitutionality.

d. Judge Michael then ruled in the *Sky Bryce* case, "To the extent plaintiff's complaint is based on a purported misapplication of the VPOAA [Virginia Property Owners Association Act] by defendants Sky Bryce and Mr. Hoole, he [Breedlove] cannot state a claim cognizable under § 1983." [November 13, 1997, ***memorandum opinion*** at subsection II. B, first paragraph.]

16. Petitioner alleges that Judge Michael's entry of the November 13, 1997, ***memorandum opinion***, misrepresenting material fact therein, and entry of the November 13, 1997, *dismissal order*, employing the misrepresentation in the November 13, 1997, ***memorandum opinion***, are each overt acts in support of a criminal conspiracy.

17. Petitioner alleges that Judge Michael willfully misrepresented that Breedlove had alleged misapplication of state law — i.e., unlawful invocation by defendants — in each of the instant two cases to circumvent Judge Michael's prior holding in the *Keystone* case. To have recognized Breedlove's actual allegations in the *Sky Bryce* case — of private party defendants' **lawful invocation** of state-created procedures, pleaded as being **in a pre-judgment attachment context**, when Breedlove had also challenged the constitutionality of those Virginia procedures — would have required a holding that defendants Sky Bryce Association, Inc., and L.E. Hoole's actions **constituted state action** for the purpose of that challenge.

18. Also, the recognition of Breedlove's actual allegations in the *Sky Bryce* case — of defendants' lawful invocation of state law, in joint participation with state officials — would have required a holding that defendants' conduct was also action under color of state law and would support Breedlove's lawsuit under the Civil Rights' Act, 42 USC §1983.[20]

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[20] "If the challenged conduct of respondents [*i.e. defendants*] constitutes state action as delimited by our prior decisions, then that conduct was also action

19. Petitioner alleges that Judge Michael willfully misrepresented material fact in his November 13, 1997, *memorandum opinion*, employed that misrepresentation in his November 13, 1997, *dismissal order*, and denied Breedlove's *motion for rehearing*, in which Breedlove brought the material discrepancy of fact to the judge's judicial notice — to evade federal constitutional review of the Virginia property owners association lien law and to maintain the enforceability of that Virginia lien statute which he knew, or should have known, to be repugnant to the Fourteenth Amendment of the U.S. Constitution.

The trial court's pattern of abuse and cover-up—

20. Petitioner alleges a premeditated pattern of abuse, constituting oppression of a citizen, and cover-up of criminal activities by federal district court personnel, calculated to deny federal civil rights and federal constitutional rights to Petitioner, in furtherance of a criminal conspiracy, of which the common purpose was to evade federal constitutional review of Virginia lien laws and to maintain illegally the enforceability of Virginia lien laws known among the federal and state judiciary to be repugnant to the U.S. Constitution's Fourteenth Amendment.

21. Petitioner alleges the existence at the Western District court of a conspiritorial agreement among Senior District Judge Michael, Magistrate Crigler, Clerk of the Court Scott, and one or more John Doe(s), persons unknown at present, to implement a pattern of abuse with the immediate objective of denying Petitioner his constitutional right as a citizen to testify in a federal court proceeding, without hinderance, and to do so in furtherance of a criminal conspiracy, of which the common purpose was to evade federal constitutional review of Virginia lien laws.[21]

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under color of state law and will support a suit under § 1983." [*Lugar*, 457 US, at 935, 73 L.Ed.2d, at 494.]

[21] Petitioner alleges the conspirators contrived an unfair, unlawful, and illegal scheme, based upon a pattern which they had practiced in the *Keystone* case, which scheme consisted broadly of:

(a) compelling the Petitioner to be subjected involuntarily to the scheme, and over any reasonable protests by Petitioner;

(b) employing judicial tactics in the instant two cases corruptly and maliciously, for the collateral effect of those tactics and their timing upon Breedlove's abilities to write, produce, and deliver *petitions for writ of*

22. Evasion of federal constitutional review is central to the conspirators purpose. Breedlove prepared and filed a constitutionality analysis, entitled "Complainant's Exhibit A, Application of Updated Doehr-version of the Three-part Mathews Test to the Virginia Property Owners Association Lien Law," dated November 2, 1995. Breedlove's constitutionality analysis, which concluded the lien law was unconstitutional, was concealed, removed, or destroyed from the record, after being accepted into the official record by Magistrate Crigler (as that acceptance is proved by hearing transcript).

23. Breedlove filed a motion for Judge Michael to take judicial notice of this exhibit (the constitutionality analysis) and several other pleadings which appeared to have been tampered in the records. Judge Michael took no action on the motion, even though Breedlove had noticed the motion for ruling on the written pleadings, without oral argument. Judge Michael's

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certiorari to the U.S. Supreme Court and ***briefs for the appellant*** to the Fourth Circuit Court in other ***Breedlove*** cases, which also challenged Virginia lien laws;

(c) using Magistrate Crigler as a perverse and corrupt filter of arguments, misrepresenting any particularly strong, valid arguments by the plaintiff or any weak arguments by the defendants, or any material fact, and insulating District Judge Michael from the actual arguments made by plaintiff and defendants;

(d) having District Judge Michael rely solely upon the representation or misrepresentation of the Magistrate, as to the substance of the plaintiff's and defendants' arguments against and for dismissal of the cases;

(e) having District Judge Michael refuse to hear *de novo* the underlying arguments on defendants' motions to dismiss, denying Petitioner's civil right under 28 USC §636 *et seq.* to the *de novo* hearing of magistrate matters objected to and appealed timely to the district judge;

(f) having Clerk of the Court Scott tamper and falsify the dates of receipt of Petitoner's timely-filed objections to the magistrate's *Report and Recommendation*, to create the appearance of Petitioner's objections having been filed untimely;

(g) obstructing justice to prevent any constitutional determination as to the Virginia property owners association lien law, concealing from the record any arguments as to the Virginia lien law's unconstitutionality, promulgating and publishing a bogus analysis of constitutionality, and refusing to perform an unbiased updated-***Doehr*** version of the three-part ***Mathews*** test for constitutionality of a state statute, in the context of private-party-deprivation of constitutionally-protected rights;[21]

(h) covering up evidences of the unfair, unlawful, and procedural scheme.

To review facts supporting these allegations, **see** Appendix Exhibits 15 - 19, hereto, at pages A43 - A72.

memorandum opinion failed to cite these documents as documents which he had reviewed and considered.

The Fourth Circuit Court's error and cover-up—

24. The Fourth Circuit Court: (1) failed to distinguish the contrasting allegations of the two appeals — defendants' **lawful** invocation versus **unlawful** invocation of State statute, in a context pleaded as pre-judgment attachment — (2) accepted Judge Michael's misrepresentation of material fact — that the two cases were virtually identical — at face value; (3) accepted Judge Michael's false implication that Breedlove had alleged Defendants' unlawful invocation of state law in the Sky Bryce case; and (4) consequently affirmed the trial judge's misapplication of the *Lugar* holding for unlawful invocation to the pleaded, **lawful**-invocation circumstances of the *Sky Bryce* case.

25. Petitioner alleges that the Fourth Circuit Court's *opinion* is reversible judicial error, committed willfully, not inadvertently. Instead, Petitioner alleges that the entry by the three-circuit-judge review panel of the Fourth Circuit Court's July 21, 1998, *opinion*, affirming the lower court's dismissal and misrepresentation of material fact, and the entry of the September 11, 1998, *order* denying rehearing, are each overt acts in support of a criminal conspiracy.[22]

IV. The Fourth Circuit Court Committed Reversible Judicial Error by Basing Its July 21, 1998, Opinion Upon Review Of and Reliance Upon False, Fraudulent, Tampered, Incomplete, Purportedly-Certified Records from Federal District Court, without Establishing a True and Correct Record of Proceedings after Petitioner Challenged the Record with Sworn Affidavit and Hard-Copy Documentary Evidence.

1. The Fourth Circuit Court was put on notice as to the false, fraudulent, tampered, incomplete nature of the federal district court records: (a) by Appellant's *informal briefs*, dated February 7, 1998; and (b) by *Appellant's Sworn Motion for the Fourth Circuit Court of Appeals To Cause the Correction and*

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[22] The facts and comments set forth in the Appendix hereto, and in the footnotes of the Appendix, are incorporated by reference for the judicial notice of this Court.

the Certification of Each of the False, Tampered, Incomplete, Uncertified Records of Appeal from the Federal District Court, in Each of the Two Instant Appeals, dated July 1, 1998.

2. Petitioner alleges that each of the records on appeal of the federal district court: (a) are not correct and are not authenticated properly in accordance with FRAP 10(a), and (b) have not been corrected pursuant to FRAP 10(e).

3. The Fourth Circuit Court saw fit willfully: (a) to ignore the false, fraudulent, tampered, incomplete nature of the purportedly-certified federal district court records; (b) to deny the Petitioner's motion of July 1, 1998, seeking to correct the federal district court records; (c) to ignore criminal charges lodged against federal court personnel for falsification of the records on appeal in the instant two cases, set forth in the July 1, 1998, motion; (d) to fail to obtain a corrected, certified federal district court record in either of the two appeals; (e) to rely upon the federal district court record in each of the two appeals and, in part, upon the false, tampered, or incomplete portions of those records, in rendering its July 21, 1998, decision; (f) to deny, in the July 21, 1998, *opinion*, Petitioner's motion for the Fourth Circuit Court's compliance with 28 USC §2403(b); (g) to characterize the title of Appellant's *motion for 28 USC §2403(b) compliance* in such a way as to conceal the material, jurisdictional nature of relief sought from the court; and (h) to opine that there were no errors, affirming the lower court's decisions, and failing to publish its *opinion*.

4. The Fourth Circuit Court's use of and reliance upon the false, fraudulent, tampered, incomplete, federal district court records, in rendering its July 21, 1998, *opinion*, constitutes denial of procedural due process to the Petitioner and denial of Equal Protection under law.

V. ***The Fourth Circuit Court of Appeals committed prejudicial error, denied procedural due process, and denied equal protection under law (a) by appointing a panel of three judges, each of whom had previously ruled against Breedlove in prior appeals of constitutional challenges to Virginia lien laws, affirming dismissals without any constitutional deter-***

mination, and (b) by each of the three appointed panel judges failing sua sponte to recuse himself.

1. The following circuit judges served as panel judges in Breedlove's previous appeals to the Fourth Circuit Court:

Docket no. 94-2316:

- √ The Honorable Paul V. Niemeyer
- √ The Honorable Clyde H. Hamilton
- The Honorable John D. Butzner

Docket no. 95-1071:

- The Honorable H. Emory Widener
- The Honorable William W. Wilkins, Jr.
- The Honorable J. Harvie Wilkinson, III

Docket no. 95-1737:

- The Honorable Donald S. Russell
- √ The Honorable Kenneth K. Hall
- The Honorable J. Harvie Wilkinson, III

2. The three-judge panel for the instant two appeals is comprised of the following:

Docket Nos. 98-1063 and 98-1064, combined:

- The Honorable Paul V. Niemeyer
- The Honorable Clyde H. Hamilton
- The Honorable Kenneth K. Hall

3. The appointees for the three-judge panel for the two instant appeals have cycled back upon the cadre of eight previously-serving circuit judges listed above, even though there were then 15 judges assigned to the Fourth Circuit Court of Appeals. Checkmarks in the list above mark the previously-serving judges, who have now again sat in judgment of Breedlove, without recusing themselves *sua sponte*.

4. Had fresh circuit judges been appointed to hear Breedlove's two instant appeals, and had the two instant appeals not been combined, Breedlove would not have been denied the procedural due process of having six fresh circuit judges review the handiwork of the lower court.

CONCLUSION

1. The failure by the Fourth Circuit Court in affirming the dismissal decision, itself, denied procedural due process to Petitioner and denied Petitioner's constitutional right to Equal Protection under law.

2. The Virginia federal courts have employed a series of unfair dirty tricks and overt acts of conspiracy to wear down the Petitioner (as a *pro se* litigant), to avoid a hearing and decision on the merits of these cases and others of Petitioner's cases, containing challenges to the constitutionality of specific Virginia lien laws and Virginia judicial procedures. Petitioner argues that if his legal arguments were *incorrect*, as to the unconstitutionality of the Virginia property owners association lien law, under *Connecticut v. Doehr*, 501 U.S. 1, 115 L.Ed.2d 1, 111 S.Ct 2105 (1991), the Petitioner's constitutional question in the instant appeals would have been ruled upon long ago and the decision would have been published to support the constitutionality of Virginia lien laws.

3. Under 28 USC §1291, Petitioner sought a *de novo* hearing on the merits before the Fourth Circuit Court. The actions of the Fourth Circuit Court's review panel have deprived Breedlove of his entitlement by right under 28 USC §1291 to an impartial *de novo* hearing, and have done so without notice or opportunity to be heard as to the deprivation of this right, in violation of the Fifth Amendment of the U.S. Constitution.

4. Thus, Petitioner is seeking exactly that: a *de novo* hearing before an impartial forum outside the Fourth Circuit *on the merits* of the causes of action for legal relief and of the causes of action for declaratory relief as to the constitutional challenges presented in the June 27, 1995, and June 27, 1997, *Complaints*: whether the Virginia property owners association lien law be constitutional or not, and the rationale for the answers to those challenges presented.

5. Petitioner avers that he cannot receive a fair hearing or fair trial in any federal court sitting in Virginia, or within the Fourth Circuit.

WHEREFORE, the Petitioner prays the Court: (1) to hear this *Petition*, and grant *certiorari*; (2) to decide the constitutional challenges to the Virginia property owners association lien law, as a declatory judgment action under 28 USC §2201; (3) to issue a detailed, "published" memorandum opinion, applying *Connecticut v. Doehr, supra*, to the constitutional challenges; (4) to remand the two cases to an impartial forum outside the Fourth Circuit, for trial on the merits; and (5) to refer the criminal matters to the Federal Bureau of Investigation for criminal investigation.

Respectfully submitted,

Kendall H Breedlove

Kendall H. Breedlove, *pro se*
2831 Gallows Road, Suite 244
Falls Church, VA 2204

Rule 29.4 (c) Note: The U.S. District Court for the Western District of Virginia, in *Breedlove v. Mihalik, et al.*, certified to the Virginia Attorney General, pursuant to 28 USC §2403(b), the fact that the constitutionality of a statute of Virginia — Virginia Code (1950), as amended, §55-514 through §55-516 — was drawn into question, by order entered July 11, 1995.

The U.S. Court of Appeals for the Fourth Circuit failed and refused to certify the constitutional challenge, pursuant to 28 USC §2403(b), to the Virginia Attorney General and denied Petitioner's written motion for the Court to comply with 28 USC §2403(b) certification and notification.

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CERTIFICATE OF SERVICE

SS:
COMMONWEALTH OF VIRGINIA
County of Fairfax, to-wit:

KENDALL H. BREEDLOVE, being first duly sworn, upon his oath deposes and says that he is a Petitioner filing *pro se*, in this cause, and that on this 10th day of December, 1998, pursuant to Rule 29.3 of the *Rules of the Supreme Court*, he mailed three copies of the ***Petition for Writ of Certiorari*** by first-class mail, postage prepaid, addressed to the counsel of record for the respondents, as follows:

Mr. James V. Ingold, counsel of record for respondents
James J. Mihalik and Sky Bryce Association, Inc.
Chadwick, Washington, Olters, Moriarty & Lynn, P.C.,
9990 Lee Highway, Suite 450
Fairfax, Virginia 22030

Mr. Gregory E. Lucyk, Senior Assistant Attorney General,
as counsel on behalf of The Commonwealth of Virginia
The Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219

Mr. James V. Ingold, counsel of record for respondents
Sky Bryce Association, and L.E. Hoole, in Mr. Hoole's
capacity as President of SkyBryce Association, Inc., and
in his individual capacity
Chadwick, Washington, Olters, Moriarty & Lynn, P.C.,
9990 Lee Highway, Suite 450
Fairfax, Virginia 22030

Mr. Mark D. Obenshain, counsel of record for respondent
Denise F. Barb, in her official capacity as Clerk,
Shenandoah County Circuit Court, and as agent for the
Judicial Branch of the Commonwealth of Virginia
Wharton, Aldhizer & Weaver, P.L.C.
100 South Mason Street
P.O. Box 20028
Harrisonburg, Virginia 22801-7528

Pursuant to Rule 29.4 (c), citing that 28 USC §2403 (b) may be applicable, he mailed three copies of the ***Petition for Writ of Certiorari*** by certified mail, postage prepaid, addressed as follows:

The Honorable Mark L. Early
Attorney General of the Commonwealth of Virginia
900 East Main Street
Richmond, Virginia 23219

Kendall H. Breedlove
Kendall H. Breedlove, *pro se*

THE FOREGOING CERTIFICATE was subscribed and sworn to before me on the 10th of December, 1998.

Notary Public

My commission expires: 11-30-2002

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

on Combined Cases

KENDALL H. BREEDLOVE,
Plaintiff/Appellant

v.

JAMES J. MIHALIK, *et al.*,
Defendants/Appellees

KENDALL H. BREEDLOVE,
Plaintiff/Appellant

v.

SKY BRYCE ASSOCIATION, INC., *et al.*, and
THE COMMONWEALTH OF VIRGINIA
Defendants/Appellees

Exhibit 1 ***Unpublished July 21, 1998, Opinion of the Fourth Circuit Court of Appeals, now being petitioned for certiorari***[1]

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1063

KENDALL H. BREEDLOVE,

Plaintiff - Appellant,

versus

SKY BRYCE ASSOCIATION, INCORPORATED; L. E. HOOLE; DENISE F. BARB; COMMONWEALTH OF VIRGINIA; JOHN #1 DOE, and other defendants unknown at present,

Defendants - Appellees.

No. 98-1064

KENDALL H. BREEDLOVE,

Plaintiff - Appellant,

versus

JAMES J. MIHALIK, In his capacity as President of the Sky Bryce Association, Incorporated, and in his individual capacity; SKY BRYCE ASSOCIATION, INCORPORATED; JOHN DOE,

Defendants - Appellees.

---

[1] To review the federal district court's July 1, 1996, dismissal order, **see** Exhibit 9, *post.* To review the federal district court's November 13, 1998, dismissal order, see Exhibit 11, *post.*

Exhibit 1, continued[2]

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. James H. Michael, Jr., Senior District Judge. (CA-97-41-H, CA-95-55-H)

Submitted : July 2, 1998 Decided: July 21, 1998

Before NIEMEYER and HAMILTON, Circuit Judges, and HALL, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Kendall H. Breedlove, Appellant Pro Se. James Van Ingold, CHADWICK, WASHINGTON, OLTERS, MORIARTY & LYNN, P.C., Fairfax, Virginia; Mark Dudley Obenshain, WHARTON, ALDHIZER & WEAVER, Harrisonburg, Virginia; Richard Cullen, Gregory E. Lucyk, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's orders denying relief on his 42 U.S.C.A. § 1983 (West Supp. 1998) complaint and motion for reconsideration. We have reviewed the records and the district court's opinions and find no reversible error. Accordingly, we affirm on the reasoning of the district court.

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[2] Note that, on its face, the *opinion* fails to set forth any compliance by the Fourth Circuit Court with 28 USC §2403 (b), for certification of a constitutional challenge to a Virginia statute and for notification of the attorney general of Virginia. In fact, the Fourth Circuit Court failed to comply with 28 USC §2403 (b). Also note that, on its face, the *opinion* fails to set forth the determinations required by *Coleman v. Thompson, supra*, that the dismissal decision, *itself*, does not abridge any constitutional rights.

Breedlove v. Sky Bryce Assoc., Inc., No. CA-97-41-H (W.D. Va. Nov 13 & Dec. 12, 1997); Breedlove v. Mihalik, No. CA-95-55-H (W.D. Va. July 1, 1996; Dec. 12, 1997). We deny Appellant's "motion for certification" and "Sworn Motion for the Fourth Circuit Court of Appeals to Cause the Correction and the Certification of Each of the False, Tampered, Incomplete, Uncertified Records on Appeal from the Federal District Court, in each of the Two Instant Appeals." We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Exhibit 2 Copy of September 11, 1998, order of the Fourth Circuit Court of Appeals, denying Petitioner's Petition for Rehearing

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
September 11, 1998

No. 98-1063
CA-97-41-H

KENDALL H. BREEDLOVE,

Plaintiff - Appellant,

versus

SKY BRYCE ASSOCIATION, INCORPORATED; L. E. HOOLE; DENISE F. BARB; COMMONWEALTH OF VIRGINIA; JOHN #1 DOE, and other defendants unknown at present,

Defendants - Appellees.

No. 98-1064
CA-95-55-H

KENDALL H. BREEDLOVE,

Plaintiff - Appellant,

versus

JAMES J. MIHALIK, In his capacity as President of the Sky Bryce Association, Incorporated, and in his individual capacity; SKY BRYCE ASSOCIATION, INCORPORATED; JOHN DOE,

Defendants - Appellees.

- - - - - - - - - - - - - - - -

On Petition for Rehearing with Suggestion for
Rehearing In Banc

- - - - - - - - - - - - - - - -

Exhibit 2, continued[3]

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Patricia S. Connor

CLERK

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[3] Breedlove's *petition for rehearing*, dated August 4, 1998, set forth at page 1, "The Petitioner requests rehearing *in banc* and requests that the entire Court be polled."

Exhibit 3 Copy of September 21, 1998, Mandate of the Fourth Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
September 21, 1998

No. 98-1063
CA-97-41-H

Breedlove v. Sky Bryce Assoc.

No. 98-1064
CA-95-55-H

Breedlove v. Mihalik

MANDATE

The judgment of this Court dated 7/21/98 takes effect today.

PATRICIA S. CONNOR
CLERK

Exhibit 4 Copy of Clerk's October 13, 1998, letter from the Fourth Circuit, enclosing "FILED" Notice of Appeal

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURT HOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219
PATRICIA S. CONNOR
CLERK
TELEPHONE
(804) 771-2213

October 13, 1998

Kendall H. Breedlove
2831 Gallows Road #244
Falls Church, VA 22042

Re: 98-1063 Breedlove v. Sky Bryce Assoc
CA-97-41-H
98-1064 Breedlove v. Mihalik
CA-95-55-H

Dear Mr. Breedlove:

I am returning your petition for writ of certiorari.[4]

This petition must be filed directly with the Clerk's Office for the Supreme Court in Washington. I am enclosing an information sheet regarding this procedure.

A copy of your petition has been retained for our files.[5]

If you should have any questions regarding this matter, please contact the clerk's office for the Supreme Court on the United States at (202) 479-3000.

Yours truly,
PATRICIA S. CONNOR
Clerk
Cheryl M. Williamson
By: Cheryl M. Williamson
Deputy Clerk

Enclosure(s)

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[4] This statement misrepresents material fact. See Exhibit 5, facing, for reprint of the document actually enclosed and returned with the October 13th letter.

[5] Although docketed in the Court's general docket, this purported "petition for writ of certiorari" was not available in the Court's appellate file, when Breedlove sought to purchase a court-certified copy of it on October 21, 1998.

Exhibit 5 Reprint of Breedlove's Notice of Appeal, marked "FILED," misrepresented in Exhibit 4 by Clerk as a petition for writ of certiorari

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

dsd/ta

FILED
1998 OCT -9 A 9:52
U.S. COURT OF APPEALS
FOURTH CIRCUIT

KENDALL H. BREEDLOVE, Appellant,	
v.	Docket No. 98-1063
SKY BRYCE ASSOCIATION, *et al.* THE COMMONWEALTH OF VIRGINIA Appellees	
KENDALL H. BREEDLOVE, Appellant,	
v.	Docket No. 98-1064
JAMES J. MIHALIK, *et al.* Appellees	

APPELLANT'S NOTICE OF APPEAL

COMES NOW the Appellant, Kendall H. Breedlove, *pro se*, and sets forth his Notice of Appeal, to-wit:

1. Appellant declares his intention, in compliance with the Federal Rules of the Supreme Court, to file an appeal with the Supreme Court of the United States, or to seek a writ of certiorari from that court, from the final determination by this Court:

Exhibit 5, continued

a. In memorandum opinion dated July 21, 1998, affirming the federal district court's dismissal decision; and

b. In order dated September 11, 1998, denying Appellant's timely-filed, ***Petition for Rehearing in Banc***, dated August 4, 1998, and suggestion for rehearing in banc.

2. Appellant states that his Constitutional rights to due process and to equal protection under law have been denied to him and that he has been denied procedural due process. Appellant states that the U.S. Court of Appeals for the Fourth Circuit—without Due Process—has deprived Appallant, permanently, of his federal civil rights under 28 USC §1291 and under 28 USC §2403 (b).

3. Appellant asks that the U.S. Court of Appeals for the Fourth Circuit recall and stay its mandate, dated September 21, 1998, pending review by the United States Supreme Court in the instant action.[6]

Respectfully submitted,

Kendall H. Breedlove
Kendall H. Breedlove, *pro se*

[Certificate of service, dated October 8, 1998, omitted.][7]

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[6] Note that this document, *Appellant's Notice of Appeal*, is the document containing Breedlove's request for the Fourth Circuit Court to recall and stay its mandate.

[7] Breedlove's diligent search (on October 21, 1998) of the appellate files in docket nos. 98-1063 and 98-1064, at the Clerk of the Fourth Circuit Court's office, failed to disclose:

a. any evidence of the existence of the Federal Express envelope, in which the original and three copies of Breedlove's *Appellant's notice of appeal* had been expressed to the Fourth Circuit Court, and delivered to the Fourth Circuit Court Clerk's office on October 9, 1998, at 9:41 AM.

b. any evidence of the existence of the certified mailing envelope # Z 084-210-571, in which the duplicate original of Breedlove's *Appellant's notice of appeal* had been mailed to the Fourth Circuit Court, and delivered to the Fourth Circuit Court Clerk's office on October 14, 1998.

c. any evidence of the duplicate original of Breedlove's *Appellant's notice of appeal* which had been mailed by certified mail # Z 084-210-571, and received at the Fourth Circuit Court on October 14, 1998, according to the green USPS certified-mail return receipt, signed for as received 10-14-98;

Exhibit 5, continued

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d. any evidence of the original and three copies of Breedlove's *Appellant's notice of appeal* which had been expressed by Federal Express to the Fourth Circuit Court, and delivered to the Fourth Circuit Court Clerk's office on October 9, 1998, at 9:41 AM, as confirmed in writing by Federal Express;

e. any evidence of the purported "Pro Se writ for certiorari" shown in the 10/9/98 docket entry in the general docket as of October 21, 1998 3:22 pm. Breedlove made particularly diligent search for this purported document, and found no copy of it in the appellate file.

Breedlove requested of deputy clerk Ms. Elizabeth Rogers to purchase a copy of the "Pro Se writ for certiorari" shown in the 10/9/98 docket entry in the general dockets of docket nos. 98-1063 and 98-1064 as of October 21, 1998 3:22 pm (of which pleading the Clerk's October 13, 1998, letter stated the Clerk's office had retained a copy). Ms. Rogers verified that the requested "Pro Se writ for certiorari" was not in either file. Breedlove watched Ms. Betty Rogers telephone "the case manager," to inquire about a copy. Ms. Rogers then reported back to Breedlove that the Court had not retained a copy of that document. Ms. Rogers was unable to sell Breedlove a copy of the purported "Pro Se writ for certiorari" shown in the 10/9/98 docket entry, because the Fourth Circuit Court had no document to copy.

Details of the events of October 21, 1998, at the Clerk's office are documented in six-page contemporaneous affidavit (with four exhibits), entitled, ***Affidavit of Kendall H. Breedlove, Appellant, As to Events of October 21, 1998, at the Clerk's Office of the U. S. Court of Appeals for the Fourth Circuit,*** executed October 31, 1998, prepared by Breedlove from Breedlove's notes made on October 21, 1998, at the Clerk's office.

Exhibit 6 Copy of Fourth Circuit Clerk's November 20, 1998, Order

FILED: November 20, 1998

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1063(L)
(CA-97-41-H)

KENDALL H. BREEDLOVE,

Plaintiff - Appellant,

versus

SKY BRYCE ASSOCIATION, INCORPORATED; L. E. HOOLE; DENISE F. BARB; COMMONWEALTH OF VIRGINIA; JOHN #1 DOE, and other defendants unknown at present,

Defendants - Appellees.

ORDER

Appellant has filed a pro se "Praecipe and Notice" wherein he requests that this Court note that he had previously filed a pro se notice of appeal wherein he expressed his intention to apply to the United States Supreme Court for a writ of certiorari. He requested in the pro se notice of appeal that this Court recall and stay its mandate pending review by the United States Supreme Court.[8]

Upopn review of appellant's pro se submissions, the Court denies the request to recall and stay its mandate pending application to the United States Supreme Court for a writ of certiorari.

For the Court - By Direction
/s/ Patricia S. Connor
Clerk

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[8] By the *praecipe and notice*, Breedlove had noticed his November 6, 1998, *motion for judicial notice* of letter, of criminal charges, and of supporting affidavit. See Exhibit 7, facing, to review copy of Breedlove's November 6, 1998, *praecipe and notice*. See Exhibit 8, *post*, to review copy of Breedlove's November 6, 1998, motion. The Fourth Circuit failed to rule on the motion.

Exhibit 7 Copy of November 6, 1998, Praecipe and Notice

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

KENDALL H. BREEDLOVE,
Appellant,
v.
SKY BRYCE ASSOCIATION, *et al.*
THE COMMONWEALTH OF VIRGINIA
Appellees

Docket
No. 98-1063

KENDALL H. BREEDLOVE,
Appellant,
v.
JAMES J. MIHALIK, *et al.*
Appellees

Docket
No. 98-1064

PRAECIPE AND NOTICE

COMES NOW the Appellant, Kendall H. Breedlove, *pro se*, and gives notice of filing his Motion for Judicial Notice, to-wit:

1. Appellant has filed herewith his *Appellant's Motion for Judicial Notice, In Accordance With Local Rule 40 (d), As Ancillary to the Filing of an Application for Writ of Certiorari to the U.S. Supreme Court*, dated November 6, 1998.

2. Appellant requests that the Clerk of the Court schedule Appellant's motion for ruling Friday, November 20, 1998.

3. Appellant requests that the Court rule upon Appellant's motion without oral argument.

4. Appellees shall please take notice of this motion and take such action as they deem appropriate.

Respectfully submitted,
Kendall H. Breedlove
Kendall H. Breedlove, *pro se*

2831 Gallows Road, Suite 244
Falls Church, Virginia 22042

[Certificate of service, dated November 6, 1998, omitted.]

Exhibit 8 Copy of November 6, 1998, Motion for Judicial Notice[9]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

KENDALL H. BREEDLOVE, Appellant, v. SKY BRYCE ASSOCIATION, *et al.* THE COMMONWEALTH OF VIRGINIA Appellees	:	Docket No. 98-1063
KENDALL H. BREEDLOVE, Appellant, v. JAMES J. MIHALIK, *et al.* Appellees	:	Docket No. 98-1064

APPELLANT'S MOTION FOR JUDICIAL NOTICE, IN ACCORDANCE WITH LOCAL RULE 40 (d), AS ANCILLARY TO THE FILING OF AN APPLICATION FOR WRIT OF CERTIORARI TO THE U.S. SUPREME COURT

COMES NOW the Appellant, Kendall H. Breedlove, *pro se*, and sets forth his Motion for Judicial Notice, to-wit:

1. Appellant Breedlove has previously announced his intention to appeal the subject cases to the U.S. Supreme Court, as set forth in his *Appellant's notice of appeal*, dated October 8, 1998, and marked as "FILED" by the Fourth Circuit Court as of October 9, 1998 at 9:52 AM (**see** Exhibit 3 to Enclosure 2 to Breedlove's November 5, 1998, letter to the Honorable J. Harvie Wilkinson, III, Chief Judge, attached hereto).

2. The instant motion is filed ancillary to that forthcoming appeal to the U.S. Supreme Court, in that the instant matters

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[9] This motion is the November 6, 1998, *motion for judicial notice* referenced in and enclosed with Breedlove's November 6, 1998, *praecipe and notice* at Exhibit 7, *ante*.

effect the record which may be subject to review by the U.S. Supreme Court.

3. Attached to this motion is a copy of Appellant Breedlove's November 5, 1998, letter to the Honorable J. Harvie Wilkinson, III, Chief Judge of the U.S. Court of Appeals for the Fourth Circuit, subject: "Criminal charges lodged against the Clerk of the Court and a deputy clerk of the U.S. Court of Appeals for the Fourth Circuit."

4. Attached to Breedlove's November 5, 1998, letter to Chief Judge Wilkinson, as enclosures thereto, are: (1) a list of sworn charges, attested to under oath on November 4, 1998, setting forth a list of violations of Title 18 of the United States Code by officers or employees of the United States, and particularly of the Fourth Circuit Court; and (2) a copy of Breedlove's *affidavit*, executed October 31, 1998, concerning the results of Breedlove's examination of Fourth Circuit Court records on October 21, 1998, which *affidavit* is offered in support of the list of charges.

WHEREFORE, the Appellant prays for the Court to take judicial notice of: (1) Breedlove's November 5, 1998, **letter to Chief Judge Wilkinson**; (2) the list of **sworn charges, attested to under oath** on November 4, 1998, **setting forth a list of violations of Title 18** of the United States Code by officers or employees of the United States, and particularly of the Fourth Circuit Court; and (3) the copy of **Breedlove's *affidavit*,** executed October 31, 1998, concerning the results of Breedlove's examination of Fourth Circuit Court records on October 21, 1998, which *affidavit* is **offered in support of the list of charges**. Appellant prays the Court to **take appropriate action to correct the record of proceedings** before the Fourth Circuit Court in each of the two combined appeals: docket nos. 98-1063 and 98-1064. [*Bold emphasis added by Petitioner.*]

Respectfully submitted,
Kendall H. Breedlove
Kendall H. Breedlove, *pro se*

2831 Gallows Road, Suite 244
Falls Church, Virginia 22042

[Certificate of service, dated November 6, 1998, omitted.]

Exhibit 9 Copy of July 1, 1996, Dismissal Order by Federal District Court[10]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KENDALL H. BREEDLOVE,) CIVIL ACTION
Plaintiff) NO. 95-0055-H
)
v.) ORDER
)
JAMES J. MIHALIK, ET AL.,) JUDGE JAMES H.
Defendants.) MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED AND ORDERED

that the Report and Recommendation of the Magistrate filed on December 27, 1995, shall be, and it hereby is, adopted to the extent that it recommends plaintiff's complaint be dismissed in its entirety. Defendants' Rule 12(b)(6) motion to dismiss plaintiff's claims against them shall be, and it hereby is, granted.

The Clerk of Court is hereby directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record, pro se plaintiff, and the Honorable B. Waugh Crigler, United States Magistrate Judge for the Western District of Virginia.

ENTERED: (signed) *Jas. H. Michael, Jr.*
Senior United States District Judge
July 1, 1996
Date

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[10] This *order* denied procedural due process, in that it was issued by surprise, prior to plaintiff Breedlove having opportunity to file timely his "Plaintiff's Memorandum To Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Violations," dated July 8, 1996. This ***memorandum*** was in response to the explicit direction to file such ***memorandum*** by the Honorable James H. Michael, Jr., District Judge, as trial judge, in open court on June 21, 1996, following Breedlove's complaint in open court that the federal district court's official case file failed to present either fairly or accurately the proceedings before the court in the instant case.

Exhibit 10 Copy of July 1, 1996, Memorandum Opinion by Federal District Court[11]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KENDALL H. BREEDLOVE, Plaintiff	)	CIVIL ACTION NO. 95-0055-H
	)	
v.	)	ORDER
	)	
JAMES J. MIHALIK, ET AL., Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

This matter comes before the court upon plaintiff's objections to the United States Magistrate Judge B. Waugh Crigler's Report and Recommendation, filed December 27, 1995. The Magistrate, in his Report and Recommendation, granted defendant's Rule 12(b)(6) motion to dismiss plaintiff's complaint. For the reasons stated below, the court affirms the Magistrate's finding that plaintiff's claims against defendants should be dismissed because the undisputed material facts in this case cannot support plaintiff's cause of action against defendants as a matter of law.

I.

Plaintiff owns two lots of real property within Defendant Sky Bryce Association ("Association"). Plaintiff alleges that the Association's former president Defendant James J. Mihalik initiated collection of property owners' association dues from plaintiff on behalf of the Association. Plaintiff challenges the amount due and payable and attacks the constitutionality of the state statute pursuant to which defendants proceeded, the

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[11] This *memorandum opinion* denied procedural due process, in that it was issued by surprise, prior to plaintiff Breedlove having opportunity to file timely his "Plaintiff's Memorandum To Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Violations," dated July 8, 1996, in response to the explicit direction to file such *memorandum* by the Honorable James H. Michael, Jr., District Judge, as trial judge, in open court on June 21, 1996, following Breedlove's complaint in open court that the federal district court's official case file failed to present either fairly or accurately the proceedings before the court in the instant case.

Virginia Property Owners' Association Act, Va. Code §§ 55-508 *et seq.* ("POAA"), and specifically § 55-516.

On February 1, 1994, defendants sent plaintiff a past-due written notice for payment of delinquent property association assessments, notifying him that if he did not remit payment in full, liens would be filed on his property. On March 30, 1994, defendants sent plaintiff another past-due notice, in compliance with § 55-516C of the POAA, again alerting him that unless payment was made within ten days, liens would be filed against plaintiff's property. On June 28, 1994, defendants filed and recorded a lien against plaintiff's properties. The onl;y action taken by the state in assisting defendants was the filing and recording of the liens.

Plaintiff asserts that defendants acted under color of an unconstitutional state law, Va. Code § 55-516, depriving him of property, liberty, and due process guaranteed him by the Fourteenth Amendment. Plaintiff also alleges a violation of the Equal Protection Clause of the Fourteenth Amendment. He brings these claims under 42 U.S.C. § 1983. Plaintiff also argues that defendants misapplied the POAA.

The Magistrate dismissed plaintiff's claim, upholding the constitutionality of the POAA because he found that it provided adequate safeguards under Connecticut v. Doehr, 501 U.S.1 (1991). The court finds, however, that it need not reach the question whether the POAA is constitutional. Plaintiff's suit against defendants cannot proceed for a simpler reason: defendants are not state actors and therefore cannot be sued under § 1983.

II.

To the extent plaintiff's complaint is based on a purported misapplication of the POAA by defendants, he cannot state a claim cognizable under § 1983. Under Lugar v. Edmondson Oil Co., 457 U.S. 922, 940 (1981), private parties who misapply state attachment procedures are not state actors because, by definition, they are not complying with state law and therefore fail to meet the requirement under § 1983 that they act under color of state law. See Keystone Builders v. Floor Fashions of Virginia, 829 F. Supp. 181, 183 (W.D. Va. 1993) (Michael, J.).

Nor can plaintiff proceed under § 1983 if his challenge is to the statute itself, rather than to its misapplication. Once again, defendants are not state actors by any stretch of the imagination. Although private parties may be deemed state actors when they make use of an unconstitutional statute, they will only be so classified if they have invoked the aid of state officials in relying upon the given statute and have secured the participation of state officials in enforcing the unconstitutional statute. Lugar, 457 U.S. at 937, 942. Without the requisite participation of a state actor, no state action will be found. See Flagg Brothers, Inc. v. Brooks, 436 U.S. 149 (1978).

In this case, the only state participation, if it can even be called that, consisted of a clerical filing and recording of the liens on plaintiff's property. Emphatically, this type of ministerial action is not the type of state participation to which Lugar speaks. There is no getting around the fact that something more—for instance a sheriff's assistance—must be present before the court can squeeze a private citizen into the mold of state actor for purposes of § 1983. See Kendall H. Breedlove v. Tysons Manor Homeowners Ass'n, No. 94-647-A at p. 15 (E.D. Va. Sept. 9, 1994) ("This simple recording of a lien, which is a ministerial act . . . just simply isn't the state action Lugar is talking about."), *aff'd*, 51 F.3d 265 (4th Cir. 1995) (per curiam) (unpublished summary disposition); Edmondson v. Leesville Concrete Co., 500 U.S. 614, 622 (1991) (Although private use of state-sanctioned remedies or procedures does not rise, by itself, to the level of state action, our cases have found state action when private parties make extensive use of state procedures with 'the overt, significant assistance of state officials.'") (citations omitted); Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982) ("[A] State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the state.") (internal quotations and citations omitted).

Plaintiff is a pro se litigant, and defendants request dismissal pursuant to Rule 12(b)(6). Keeping in mind the extremely liberal review to which plaintiff is entitled, the court nonetheless cannot, from the facts alleged by plaintiff, find any action by a state actor that could fairly be described as coercive or significant or anything but trivial. Because § 1983 requires action under color of state law, and defendants did not act under color of state law, plaintiff's claims against defendants must be dismissed.

An appropriate Order shall this day issue.

ENTERED: (signed) *Jas. H. Michael, Jr.*
Senior United States District Judge

July 1, 1996
Date

Exhibit 11 Copy of November 13, 1997, Dismissal Order by Federal District Court[12]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KENDALL H. BREEDLOVE,) CIVIL ACTION
Plaintiff) NO. 97-0041-H
)
v.)
)
SKY BRYCE ASSOC., INC.,) ORDER
L.E. HOOLE,)
DENISE F. BARB,)
JOHN DOE AND OTHERS)
UNKNOWN,)
THE COMMONWEALTH OF)
VIRGINIA,) JUDGE JAMES H.
Defendants.) MICHAEL, JR.

Upon consideration of the defendants' Motions to Dismiss and of defendants Sky Bryce Assoc., Inc.'s and L.E. Hoole's Motion for Rule 11 Sanctions and for the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED AND ORDERED

(1) that the August 27, 1997 Motion to Dismiss of defendants Sky Bryce Assoc., Inc. and L.E. Hoole shall be, and hereby is, GRANTED;

---

[12] This order — issued by surprise, without notice or hearing, one day before the court-scheduled November 14, 1997, hearing on defendants' Motions to Dismiss and on plaintiff's motion for determination of conflict of interest of counsel for Sky Bryce Association, Inc., and L.E. Hoole:

(1) denied procedural due process by failing to provide adequate notice of the court's impending action and, particularly, by contravening the court's own previously-scheduled notice of November 14, 1997, hearing on the defendants' motions to dismiss;

(2) denied procedural due process by ruling without opportunity for either defendants or plaintiff to be heard either (a) on defendants' motions to dismiss and motion for Rule 11 sanctions or (b) on plainitff's six pending motions and pending appeal of magistrate's October 7, 1997, decision; and

(3) failed to address Plaintiff's unresolved October 17, 1997, complaint of falsified official case records or to address Plaintiff's unresolved October 17, 1997, criminal charges lodged against court officers.

(2) that the August 11, 1997 Motion to Dismiss of defendant Denise F. Barb shall be, and hereby is, GRANTED;

(3) that the August 27, 1997 Motion to Dismiss of defendant the Commonwealth of Virginia shall be, and hereby is, GRANTED;

(4) that the August 27, 1997 Motion for Rule 11 Sanctions of defendants Sky Bryce Assoc., Inc. and L.E. Hoole, shall be, and hereby is, DENIED;

(5) that all other pending motions in this case shall be, and hereby are, DENIED as moot; and

(6) that this case shall be, hereby is, DISMISSED with prejudice and STRICKEN from the docket of this court.

The Clerk of Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record and to *pro se* plaintiff.

ENTERED: (signed) *Jas. H. Michael, Jr.*
Senior United States District Judge

13 November 1997
Date

Exhibit 12 Copy of November 13, 1997, Memorandum Opinion by Federal District Court [13]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KENDALL H. BREEDLOVE,	)	CIVIL ACTION
Plaintiff	)	NO. 97-0041-H
	)	
v.	)	
	)	
SKY BRYCE ASSOC., INC.,	)	MEMORANDUM
L.E. HOOLE,	)	OPINION
DENISE F. BARB,	)	
JOHN DOE AND OTHERS UNKNOWN,	)	
THE COMMONWEALTH OF VIRGINIA,	)	JUDGE JAMES H.
Defendants.	)	MICHAEL, JR.

This matter comes before the court upon the defendants' Motions to Dismiss. For the reasons stated below, the court will dismiss all of plaintiff's claims against the defendants because the plaintiff has failed to state claims upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), because certain of the defendants are entitled to immunity from suit, and because the plaintiff is precluded by the doctrines of *res judicata* and *collateral estoppel*[1] from maintaining the [*sic*] this action.

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[1] The instant case is virtually identical to that brought by plaintiff in *Breedlove v. Mihalik, et al.*, Civil Action No. 95-0055-H, (W.D. Va. July 1, 1996) (Michael, J.). In this case, plaintiff has simply added the Commonwealth and Ms. Barb as defendants and replaced the former Association President with the current one as a defendant. The "substantive" claims remain identical. [*n.b., This footnote by the court is part of the memorandum opinion.*] [14]

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[13] Footnote 13, page A-10, complaining of lack of procedural due process, is restated here as to the memorandum opinion.

[14] Note 1 by Judge Michael purports falsely that the instant case of *Breedlove v. Sky Bryce Assoc., Inc., et al.*, is "virtually identical to" the case of *Breedlove v. Mihalik, et al.*, with each case being a civil rights' case brought under 42 USC §1983, and with the mere change of three defendants. This is a misrepresentation of material fact.

I. BACKGROUND

Mr. Breedlove owns several lots of real property in Basye, Virginia within the Bryce Mountain resort development. Bryce Mountain is organized by defendant Sky Bryce Association ("Association"), the property owners' association. Plaintiff alleges that the Association's president, defendant L.E. Hoole ("Hoole"), initiated the collection of property owners' association dues from plaintiff on behalf of the Association. Plaintiff attacks the constitutionality of the State statute pursuant to which defendants proceeded, the Virginia Property Owners' Association Act ("VPOAA"), Va. Code §§ 55-508 to 55-516.2 and specifically § 55-516.

On June 17, 1996, defendants sent plaintiff a past-due notice for payment of delinquent property association assessments, notifying him that if he did not remit payment in full in ten (10) days, liens would be filed on his property. The Association sent this past-due notice in compliance with §55-516(C) of the VPOAA. On June 28, 1996, defendants filed, and had recorded, two liens against plaintiff's properties. According to plaintiff's Complaint, since filing the liens, the defendants have not initiated suit to enforce them[2].

---

[2] It should be noted that pursuant to Va. Code § 55-516(E), the Association has twenty-four (24) months to sue to enforce the recorded liens. The twenty-four months, obviously, have not run yet. [*n.b., This footnote by the court is part of the memorandum opinion.*]

In fact, the *Sky Bryce* case alleges that the defendants employed 1996 Virginia property owner association liens ***lawfully***, while the ***Mihalik*** case alleges that the defendants employed 1994 Virginia property owner association liens ***unlawfully***.

Also, the *Sky Bryce* case includes — in addition to three 42 USC §1983 counts — a count for declaratory judgment of unconstitutionality as to the Virginia Property Owners Association lien law, on its face, pursuant to 28 USC §2201, and a count for constitutional tort by defendants. The ***Mihalik*** case contains only a single 42 USC §1983 count. Each case needs proof by different sets of facts, making them each unique cases.

Mr. Breedlove asserts that the defendants acted under color of an unconstitutional State statute, Va. Code § 55-516[3], depriving him of property, liberty, and Due Process of law guaranteed him by Amendment XIV to the United States Constitution. He seeks redress for his Constitutional claim under 42 U.S.C. § 1983 ("§ 1983"). Finally, plaintiff claims that he has been deprived of the Equal Protection of the laws guaranteed by Amendment XIV.[4]

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[3] Va. Code § 55-516, "Lien for Assessments," reads, in pertinent part: "A. Once perfected, the association shall have a lien on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter. ... C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner ... informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable city or county. The notice shall be sent at least ten days before actual filing date of the memorandum of lien." [*n.b., This footnote by the court is part of the memorandum opinion.*]

[4] Plaintiff's Equal Protection allegation appears to be little more than window dressing, for there is no conceivable legal argument that could support such a violation on the facts of this case as plaintiff has presented them. [*n.b., This footnote by the court is part of the memorandum opinion.*] [15]

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[15] Petitioner denies Judge Michael's allegation that Petitioner's Equal Protection allegation is "window dressing." Petitioner (plaintiff) Breedlove's Equal Protection allegation in Count III of the June 27, 1997, Complaint, at pages 38-39, was as follows:

" *Equal Protection deprivation—*

" 4. Plaintiff Breedlove is a United States citizen, and as such, is entitled to have the holdings of the United States Supreme Court applied equally to him as to every other United States citizen.

" a. The United States Supreme Court held, in *Connecticut v. Doehr*, 501 U.S. at 12, 115 L.Ed.2d, at 14 (1991):

> "To the contrary, our cases show that even the temporary or partial impairments to property rights that attachments, liens, and similar encumbrances entail are sufficient to merit due process protection. Without doubt, state procedures for creating and enforcing attachments, as with liens, 'are subject to the strictures of due process.'"

Defendants reply with motions to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). They argue that: (1) plaintiff has not bee deprived of any Federally protected right; (2) defendants Sky Bryce and Mr. Hoole are not State actors and thus are not susceptible to suit under § 1983; (3) Amendment XI to the United States Constitution confers immunity on the Commonwealth in litigation brought by her citizens; and (4) Ms. Barb, individually, is entitled either to absolute or qualified immunity from suit.

II. DISCUSSION

A. *Motion to Dismiss Standard*

" b. The United States Supreme Court held, in *United States v. Good Real Property*, 126 L.Ed.2d at 503; 114 S.Ct., at 500-501 (1993):

> "The right to prior notice and a hearing is central to the Constitution's command of due process. 'The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property...'*Fuentes v. Shevin*, 407 U.S. at 80-81, 92 S.Ct., at 1994-1995'

" 5. Defendants Sky Bryce Association, Inc., et al., did not comply with the strictures of due process— (a) adequate prior notice to Plaintiff of where Plaintiff could appear and contest the claim before it became a lien and (b) opportunity for Plaintiff to be heard before an impartial tribunal prior to the liens depriving Plaintiff of a significant property interest—when they invoked Virginia Code (1950), as amended, §55-516, for the creation of liens and thereby deprived Plaintiff of Equal Protection under law, in that Plaintiff is entitled to having any lien against Breedlove provide (a) adequate prior notice to Plaintiff of where Plaintiff could appear and contest the claim before it became a lien and (b) opportunity for Plaintiff to be heard before an impartial tribunal prior to the liens depriving Plaintiff of a significant property interest."

Petitioner asserts that the Complaint's paragraph 4 allegation, above, of Petitioner's being deprived of the equal protection of the case law of United States Supreme Court holdings by defendants invoking a Virginia state-created procedural system which systematically deprives lienees of their Constitutional rights to due process (1) is neither trivial nor "window dressing," (2) is a valid allegation of a Constitutional-rights deprivation as a matter of law; and that the paragraph 5 allegation, above, is a factual allegation which Petitioner is entitled to prove before a jury.

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure "Failure to state a claim upon which relief can be granted" provides grounds for dismissal. For purposes of a Fed. R. Civ. P. 12(b)(6) motion, all factual allegations in a plaintiff's complaint must be accepted as true. *Estate Constr. Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 217-18 (4th Cir. 1994). A plaintiff's complaint ought not be dismissed unless it is apparent that the plaintiff "would not be entitled to relief under *any* facts which could be proved in support of [his] claim." *Schatz v. Rosenberg*, 943 F.2d 485, 489 (4th Cir. 1991) (emphasis added); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). For this reason, Rule 12(b)(6) dismissals are generally disfavored. *Id.*

Rule 12(b)(1) provides the defense of dismissal for "lack of jurisdiction over the subject matter." Fed. R. Civ. P. 12(b)(1).

B. Plaintiff's Claims under 42 U.S.C. § 1983

To the extent plaintiff's complaint is based on a purported misapplication of the VPOAA by defendants Sky Bryce and Mr. Hoole, he cannot state a claim cognizable under § 1983. Under *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 940 (1981), private parties who misapply State attachment procedures are not State actors because, by definition, they are not complying with State law and therefore fail to meet the requirement under § 1983 that they act under color of State law. *See Keystone Builders v. Floor Fashions of Virginia*, 829 F.Supp. 181, 183 (W.D. Va. 1993) (Michael, J.).[16]

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[16] By this paragraph — taken in conjunction with Judge Michael's statement in Note 1, *ante*, that "[t]he instant case is virtually identical to ... *Breedlove v. Mihalik, et al.* ...," in which *Mihalik* case Breedlove did allege that defendants failed to comply with the VPOAA lien statute for the creation of the 1994 liens — Judge Michael, in this *memorandum opinion*, creates the false implication that Breedlove has alleged the *misapplication* by defendants of the VPOAA in the circumstances of the 1996 liens (which are the subject of the instant case).

In fact, in Count I of the June 27, 1997, Complaint, in paragraph 7, at page 24, (restated by reference in Counts II and III), Breedlove alleged lawful application as follows:

> " 7. The Defendants Sky Bryce Association, Inc., et al., caused the Plaintiff to be deprived of one or more constitutionally-protected rights or entitlements by the Defendants' **lawful exercise** of the right or privilege

created by the Commonwealth of Virginia in *Virginia Code §55-516*, to create liens for Property Owners Association dues and assessments without providing constitutional Due Process. **See** *Lugar v. Edmondson Oil Co., id.*, at 495." (footnote omitted which quoted the relevant *Lugar* holding in the Complaint). [*n.b., Bold emphasis added by Breedlove for this Petition.*]

In Count I of the June 27, 1997, Complaint, in paragraph 1, at page 22, (restated in Counts II and III), Breedlove alleged prejudgment attachment as follows:

> " 1. This Count I is a cause of action under *42 USC §1983* against Defendants Sky Bryce Association, Inc., L.E. Hoole, individually, and in his capacity as President of the Sky Bryce Association, Inc., Denise F. Barb, in her capacity as Clerk of Shenandoah County Circuit Court, in Virginia, acting as an agent for the Judicial Branch of the government of the Commonwealth of Virginia, and *John Doe*, acting jointly, who, all acting under color of state law and process (two June 28, 1996 POA liens created under the Virginia Property Owners Association Act, particularly *Virginia Code §55-514* through *§55-516*) subjected the Plaintiff or caused the Plaintiff to be subjected (the Plaintiff being a citizen of the United States) to the deprivation of his rights, privileges, or immunities—deprivation of a significant property interest—secured by the Constitution and laws of the United States, in that Defendants filed two Property Owners Association liens on June 28, 1996, **as judicial process employed as a prejudgment remedy, for prejudgment attachment**, against Plaintiff, as named lienee, which liens:
>
> (a) were lawful pursuant to *Virginia Code §55-516* for the creation of liens;
>
> (b) were unconstitutional because (1) the Defendants invoked state law (*Virginia Code §55-514* through *§55-516*) which, *on its face*, is repugnant to the Fourteenth Amendment of the Constitution of the United States; and (2) the Defendants did not provide constitutional Due Process to the Plaintiff before the liens attached, even though the Defendants complied with the Virginia property owner association lien law, *Virginia Code §55-514* through *§55-516*; * * *" [*n.b., Bold emphasis added by Breedlove for this Petition.*]

Judge Michael's *memorandum opinion* overlooked the matter of law alleged in Count I of the June 27, 1997, Complaint, in paragraph 15e, at page 27, (restated by reference in Counts II and III), where Breedlove alleged as follows:

> "[15] e. The actions of Defendants Sky Bryce Association, Inc., et al., were those of persons acting "under color of state law," for purposes of 42 USC §1983, and were within the construction and meaning of "state action," as interpreted by the federal district court for the Western District of Virginia, Judge Michael presiding, stated in *Keysone Builders v. Floor Fashions of Virginia*, 829 F.Supp. 181, 183 (W.D. Va., 1993), to-wit:
>
> > "The court notes here that ***Lugar* held, in the pre-judgment attachment context, that a private party's lawful invocation of procedures which later come under constitutional challenge *does* constitute state action for the purposes of that challenge**. 457 U.S. at 942, 102 S.Ct. at 2756, 73 L.Ed.2d at 498-499. The Fourth Circuit has held in

Nor can Mr. Breedlove proceed under § 1983 if his challenge is to the statute itself, rather than to its misapplication. Once again, Sky Bryce and Mr. Hoole are not State actors by any stretch of the imagination. Although private parties may be deemed State actors when they make use of an unconstitutional statute, they will only be so classified if they have invoked the aid of State officials in relying upon the given statute and have secured the participation of State officials in enforcing the unconstitutional statute. *Lugar*, 457 U.S. at 937, 942. Without the requisite participation of a State actor, no State action will be found. *See Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149 (1978).[17]

> the *post*-judgment attachment context, that a private party's mere invocation of challenged procedures, without more, does not transform that party into a state actor. *Jones v. Poindexter*, 903 F.2d at 1011." [*bold emphasis added by Plaintiff to Keysone Builders v. Floor Fashions of Virginia, id.*, at 183, in note 1.]"

Petitioner Breedlove had alleged in his Complaint: (1) lawful invocation by defendants of Virginia state-created procedures, (2) of which Breedlove challenged the constitutionality, (3) in a pre-judgment attachment context — thus making Judge Michael's own interpretation (in *Keystone*) of *Lugar* ("... that a private party's lawful invocation of procedures which later come under constitutional challenge *does* constitute state action for the purposes of that challenge... ") applicable as a binding precedent of the very same Western District court.

[17] In Count I of the June 27, 1997, Complaint, in paragraphs 15a- 15e, at pages 26-27, (restated by reference in Counts II and III), Breedlove alleged state action by joint participation as follows:

> " *Second part of fair-attribution test: The Defendants, as parties charged with the deprivation, may fairly be said to be state actors—*
>
> " 15. The Defendants Sky Bryce Association, Inc., et al., caused the two June 28, 1996, POA liens against Plaintiff to be admitted to record as liens through the direct action, participation, and assistance of a Shenandoah County Circuit Court official, acting as an agent of the Commonwealth of Virginia—the Clerk of the Circuit Court of Shenandoah County, Virginia, as Recorder of Deeds, thus characterizing the Defendants, although private parties, as state actors for purposes of the Fourteenth Amendment of the United States Constitution. **See** *Lugar, supra*, at 498.[24]
>
> [Note 24 from the Complaint, at page 26 thereof: "As is clear from the discussion in Part II, we have consistently held that a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment. The rule in these cases is the same as that

articulated in Adickes v. S.H. Kress & Co., supra, at 152, 26 L Ed 2d 142, 90 S Ct 1598 in the context of an equal protection deprivation:

> '"Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents."' quoting United States v. Price, 383 US, at 794, 16 L Ed 2d 267, 86 S Ct 1152'" [*Lugar v. Edmondson Oil Co., supra, id.*, at 498.]

" a. The Defendants Sky Bryce Association, Inc., et al., participated jointly with state officials—the Clerk of Shenandoah County Circuit Court and her employees—in the creation of the two June 28, 1996 POA liens as prejudgment remedies and not as post-judgment remedies.

" b. The Defendants Sky Bryce Association, Inc., et al., obtained significant aid from the Clerk of Shenandoah County Circuit Court—as Recorder of Deeds—in that the Clerk of the Circuit Court, through her employees, affixed her official indicia of recording and attestation to the two June 28, 1996 POA liens against Plaintiff admitting them to record, and thereby completed the attachment of the liens, depriving Plaintiff of his federal rights, without constitutional Due Process.

" c. The Defendants Sky Bryce Association, Inc., et al., were willful participants in the joint activity of creating the June 28, 1996 POA liens with the State or its agents. **See** *United States v. Price*, 383 US, at 794, 16 L Ed 2d 267, 86 S Ct 1152, as quoted in *Lugar, supra*, at 498. (footnote 25 omitted)

d. The actions of Defendants Sky Bryce Association, Inc., et al., were those of persons acting "under color of state law," for purposes of 42 USC §1983, and were within the construction and meaning of 42 USC §1983. It is the construction and meaning of 42 USC §1983, as interpreted by the United States Supreme Court holding in *Lugar, supra*, that:

> In the context of a due-process deprivation, a private party's invoking the aid of state officials to take advantage of unconstitutional, state-created, attachment procedures is sufficient, without more, to constitute a person acting "under color" of law for purposes of 42 USC §1983 (satisfying the second part of the "fair attribution" test), when the State has created an unconstitutional system whereby State officials will attach property on the ex parte application of one party to a private dispute (satisfying the first part of the "fair attribution" test).

" e. The actions of Defendants Sky Bryce Association, Inc., et al., were those of persons acting "under color of state law," for purposes of 42 USC §1983, and were within the construction and meaning of "state action," as interpreted by the federal district court for the Western District of Virginia, Judge Michael presiding, stated in ***Keysone Builders v. Floor Fashions of Virginia***, 829 F.Supp. 181, 183 (W.D. Va., 1993), to-wit:

In this case, the only State participation, if it can even be called that, consisted of a clerical filing and recording of the liens on plaintiff's property. Emphatically, this type of ministerial action is not the type of state participation to which *Lugar* speaks. There is no getting around the fact that something more must be present before the court can squeeze a private citizen into the mold of State actor for purposes of § 1983. *See Breedlove v. Mihalik, et al.*, No. 95-0055-H at 3 (W.D. Va. July 1, 1996) (Michael, J.); *Breedlove v. Tysons Manor Homeowners Ass'n*, No. 94-647-A at 15 (E.D. Va. Sept. 9, 1994) ("This simple recording of a lien, which is a ministerial act ... just simply isn't the state action Lugar is talking about."), *aff'd*, 51 F.3d 265 (4th Cir. 1995) (per curiam) (unpublished summary disposition).

Accordingly, the § 1983 claims against defendants Sky Bryce and Mr. Hoole will be dismissed for failing to state causes of action. As well, because the same issue was actually decided, or could have been decided, previously in *Breedlove v. Mihalik, et al., supra*, the doctrines of *res judicata* and *collateral estoppel* operate as affirmative defenses to the instant claims and provide alternative bases to dismiss the § 1983 counts.

C. Eleventh Amendment Immunity for the Commonwealth

The Eleventh Amendment reads, in its entirety:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United

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'The court notes here that ***Lugar*** **held, in the pre-judgment attachment context, that a private party's lawful invocation of procedures which later come under constitutional challenge does constitute state action for the purposes of that challenge**. 457 U.S. at 942, 102 S.Ct. at 2756, 73 L.Ed.2d at 498-499. The Fourth Circuit has held in the post-judgment attachment context, that a private party's mere invocation of challenged procedures, without more, does not transform that party into a state actor. Jones v. Poindexter, 903 F.2d at 1011' [*bold emphasis added by Plaintiff to Keysone Builders v. Floor Fashions of Virginia, id.*, at 183, in note 1.]"

> States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XI to the United States Constitution.

While the Eleventh Amendment, by its express terms, does not bar suits against a State by her own citizens, an unconsenting State is nonetheless immune from suits brought in Federal courts by her own citizens as well as by citizens of another State. *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347 (1974); *Dawkins v. Craig*, 483 F.2d 1191 (4th Cir. 1973).[5]

The Eleventh Amendment bars actions seeking declaratory relief as well as those for money damages. *Seminole Tribe*, — U.S. at —, 116 S.Ct. at 1124 ("[T]he relief sought by a plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment."). The narrow, albeit long-standing, exception to Eleventh Amendment immunity arises only when prospective injunctive relief against a State official is sought to end a continuing violation of Federal law. *Ex Parte Young*, 209 U.S. 123 (1908). Such is not the situation here; *Ex Parte Young* is inapposite.

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[5] "[W]e have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition ... which it confirms ... That presupposition, first observed over a century ago in *Hans v. Louisiana*, 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842 (1890), has two parts: first, that each State is a sovereign entity in our federal system; and second, that 'it is inherent in the nature of sovereignity not to be amenable to the suit of an individual without its consent ....'" *Seminole Tribe v. Florida*, — U.S. —, 116 S.Ct. 1114, 1122 (1996) (citations and quotations omitted). [*n.b., This footnote by the court is part of the memorandum opinion.*] [18]

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[18] The November 13, 1997, ***memorandum opinion*** overlooks the material fact of the counsel for each of defendants Commonwealth of Virginia and Denise F. Barb having submitted their respective clients voluntarily to the jurisdiction of the federal district court, thus consenting to suit, to-wit:

(1) September 2, 1997, ***Right to Consent to Jurisdiction of United States Magistrate Judge*** form, dated and executed September 2, 1997, as to defendant Commonwealth of Virginia for the instant case, agreeing to Magistrate jurisdiction.

Here, Mr. Breedlove, a citizen of Virginia, has sued the Commonwealth in COUNT IV seeking a declaration of the unconstitutionality of the VPOAA.[19] The court need not reach the issue of the Act's constitutionality, however, because the

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Mr. Gregory E. Lucyk, Special Assistant Attorney General, who signed the *Right to Consent to Jurisdiction of United States Magistrate Judge* form as counsel on behalf of The Commonwealth of Virginia, did not claim special appearance.

By this executed form, counsel for the Commonwealth of Virginia (*i.e.*, a senior assistant attorney general for Virginia, acting within the scope of his duties, and acting as counsel representing the Commonwealth of Virginia) evidenced the submission of the Commonwealth of Virginia voluntarily to the jurisdiction of the federal district court.

(2) August 28, 1997, *Right to Consent to Jurisdiction of United States Magistrate Judge* form, dated and executed August 28, 1997, as to defendant Denise F. Barb for the instant case, agreeing to Magistrate jurisdiction.

Then, subsequent to the filing and service upon opposing counsel and upon *pro se* plaintiff of these two *consents* (plaintiff has executed service copies of each *consent* form), by which defense counsels had submitted their respective Commonwealth clients voluntarily to the jurisdiction of the federal district court — one or more persons removed, concealed, or destroyed the executed August 28, 1997, and September 2, 1997, *consents* of the Commonwealth of Virginia and of one of the Commonwealth's constitutional officers from the federal district court official records and concealed the material facts as to these two *consents* from the record on appeal, to-wit:

(1) The Clerk of the federal district court failed to docket the September 2, 1997, *consent to jurisiction of magistrate judge* as to defendant Commonwealth of Virginia (a jurisdictional form) in either of the *civil docket summaries* of January 10, 1998 3:34 pm or January 29, 1998 10:50 pm, transmitted as part of the record on appeal to the Fourth Circuit Court for the instant case.

(2) The Clerk of the Court failed to docket the August 28, 1997, *consent to jurisiction of magistrate judge* as to defendant Denise F. Barb (a jurisdictional form) in either of the *civil docket summaries* of January 10, 1998 3:34 pm or January 29, 1998 10:50 pm, transmitted as part of the record on appeal to the Fourth Circuit Court for the instant case.

To top off this denial of procedural due process to plaintiff, the Fourth Circuit Court refused to cause either of the false, tampered, imcomplete records on appeal to be corrected upon Appellant's sworn motion dated July 1, 1998.

[19] Count IV of the June 27, 1997, Complaint is summarized in the Complaint, Count IV, at page 41 thereof, as follows:

> " 1. This Count IV is a cause of action under *28 USC §2201* for declaratory judgment of unconstitutionally against the Commonwealth of Virginia, as the State which created and maintains the procedurally-defective scheme for creating and enforcing Virginia property owner association liens pursuant to the Virginia Property Owners Association Act, particularly *Virginia Code §55-514* through *§55-516*, which statutes, *on their face*, are repugnant to the Fourteenth Amendment of the Constitution of the United States for: (1) failing to provide constitutional due process, and (2) contravening the holdings of the United States Supreme Court in *Connecticut v. Doehr, supra*, and in *United States v. Good Real Property, supra*."

Commonwealth is immune from suit under the Eleventh Amendment. Therefore, the court will dismiss the count in accordance with the doctrine of sovereign immunity.

D. Defendant Barb's Immunity [20], [21]

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[20] Defendant Barb is a named party defendant in the three § 1983 counts (Counts I, II, and III), and in the constitutional tort count (Count V) of the Complaint, as a necessary party defendant, although no civil monetary damages were sought against either Defendant Barb or against the Commonwealth of Virginia.

[21] The November 13, 1997, *memorandum opinion* has focused on affirmative defenses of Defendant Barb in her individual capacity, and has failed to address the material fact of Defendant Barb being named in the Complaint, in Counts I, II, III, and V, as a party defendant in her official capacity as a constitutional officer of the Commonwealth of Virginia.

In each of these four counts, plaintiff prayed for civil damages against other private-party defendants, for leave to amend in the event of any insufficiencies in the Complaint, for a publically-published opinion and decision, and for "such other and further relief as may seem proper to this Court [*the federal district court.*]." The phrase, "such other and further relief" could include declaratory judgment as to constitutionality of the VPOAA lien law and prospective injunctive relief against Defendant Barb, as a constitutional officer of the Commonwealth of Virginia, prohibiting her enforcement of the VPOAA lien law if the lien law be ruled unconstitutional if such declaratory judgment and injunctive relief was merited by the case.

Judge Michael has failed to demonstrate judicial notice or consideration of the argument and legal authority against Defendant Barb's immunity as Clerk of Shenandoah County set forth by Plaintiff in *Plaintiff's Supplemental Memorandum in Opposition to Defendant Barb's Motion to Dismiss or For Summary Judgment*, dated October 12, 1997, at pages 4 and 3, respectively, as follows:

> " 6. Defendant Barb may not assert, as counsel has tried to do, both the State's Eleventh Amendment immunity against suit without permission, and personal official privilege of absolute or qualified immunity. "To extent § 1983 claim [*for other than declaratory or injunctive relief*] is asserted against state official in his official capacity, he may assert state's Eleventh Amendment immunity against suit, but not personal official privilege of absolute or qualified immunity; conversely, to extent such claim is asserted against him in his individual capacity, he may assert privileges of absolute or qualified immunity but may not assert immunity under Eleventh Amendment" [*Ying Jing Gan v. City of New York*, (1993, CA2) 996 F2d 522] Plaintiff's June 27, 1997, *Complaint* makes clear that Defendant Barb is named a party defendant in her official capacity, not in her individual capacity.
>
> " 4. Lawsuits seeking declaratory judgment as to constitutionality and injunctive relief against State officials are not barred by Eleventh Amendment privilege.
>
> * * * * *
>
> " c. The Ninth Circuit held that: "State attorney general against whom judgment declaring state statute violative of Federal Constitution is sought, cannot claim protection from suit on ground that it is suit against state, since no official is under duty to enforce law that violates Federal Constitution and, in attempting to do so, he is not fulfilling official duty or acting for state;" in *Southern Pac. Co. v. Conway* (1940, CA9 Ariz) 115 F2d 746."

1. Derivative Absolute Judicial Immunity

Clerks of courts "are accorded derivative absolute immunity when they act in obedience to judicial order or under the court's direction." *Clay v. Yates*, 809 F.Supp. 417 (E.D. Va. 1992), *citing McCray v. Maryland*, 456 F.2d 1 (4th Cir. 1972). As alleged in the Complaint itself, defendant Denise Barb was acting "in her capacity as Clerk of the Shenandoah County Circuit Court ... [and] as an agent for the judicial branch of the government of the Commonwealth of Virginia" when she attested and recorded the two lien notices at issue here. Complaint at 23-24. Thus, to the extent to which Ms. Barb recorded the liens under the court's direction and as its agent, she is entitled to derivative, absolute judicial immunity.

2. Qualified Immunity

The law of qualified immunity is clear that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1981). "Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal *before* the commencement of discovery." *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815 (1985) (emphasis added).

Defendant Barb here simply complied with the VPOAA's requirements and recorded the lien notices. At the time of recording, the asserted unconstitutionality of the VPOAA was most definitely *not* clearly established law sufficient to put a reasonable government official on notice and, thereby, to

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Suit against Defendant Barb — in her capacity as a constitutional officer of the Commonwealth of Virginia — is not barred as to judgment of unconstitutionality or prospective injunctive relief, in accordance with the Ninth Circuit's holding in *Southern Pac. Co. v. Conway, supra.* (Additional details may be found in *Plaintiff's Supplemental Memorandum in Opposition to Defendant Barb's Motion to Dismiss or For Summary Judgment*, dated October 12, 1997.)

overcome the qualified immunity that ordinarily would apply. To the contrary, any reasonable clerk of court, like Ms. Barb, who dealt with the workings of the statute regularly, would have had every reason to believe that the VPOAA was constitutional at that time based on Mr. Breedlove's prior litigation of that very issue.[6]

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[6] *See Breedlove v. Mihalik*, No. 95-0055-H (W.D. Va. July 1, 1996) (dismissed); *Ex Parte Kendall H. Breedlove*, No. 94-639-A (E.D. Va February 10, 1995) (dismissed), *modified and aff'd*, No. 95-1737 (4th Cir.), *cert. denied*, 95-1739 (June 17, 1996); *Breedlove v. Tysons Manor Homeowners Assoc.*, No. 94-647-A (E.D. Va. September 9, 1994) (dismissed), *aff'd*, No. 94-2315 (4th Cir.), *cert. denied*, 95-474 (1996). In each and every case, Mr. Breedlove's Constitutional challenges to the VPOAA were dismissed. [*n.b., This footnote by the court is part of the memorandum opinion.*] [22]

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[22] Breedlove's prior cases containing constitutional challenges to the VPOAA were each dismissed without any federal district court ruling on whether the lien statute of the VPOAA was constitutional. No court has ever issued a published ruling as to whether the VPOAA lien statute is constitutional.

Because Ms. Barb's conduct in filing and recording the property association liens was objectively reasonable, Mr. Breedlove's "bare allegations of malice should not suffice to subject [the] government official[] either to the costs of trial or to the burdens of broad-reaching discovery." ***Harlow*****, 457 U.S. at 817-818, 102 S.Ct. at 2738.**[23] **Thus, the defendant's motion to dismiss will be granted.**[24]

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[23] Breedlove denies that his allegations of malice were only "bare allegations of malice," but rather asserts the allegations were particularized in Count V of the Complaint, at page 51 thereof, to-wit:

> " 9. Defendants Sky Bryce Association, Inc., et al., [*n.b., includes Defendant Barb by prior definition*] wrongful acts, conduct, and omissions demonstrated actual malice against Plaintiff, including willful, wanton, reckless disregard of the Plaintiff's rights and of the rights of others, in that:
>
> a. Failing to provide minimal constitutional Due Process—notice and opportunity to be heard—to the Plaintiff prior to the deprivation caused by Defendants' filing of the two June 28, 1996 POA liens is an omission demonstrating actual malice, and constitutes an act of malice;
>
> b. Filing the two June 28, 1996 POA liens in lawful compliance with *Virginia Code (as amended) §55-516*, against the Plaintiff, but knowingly without constutional due process, as part of a pattern of conduct encompassing 187 Virginia POA liens filed by the Defendants on June 28, 1996, is an action demonstrating actual malice and constitutes an act of malice."

[24] The November 13, 1997, ***memorandum opinion*** has failed to address explcitly or to resolve Count V, the common law, constitutional-tort cause of action of the Complaint.. The common law does not necessitate that private parties be State actors to have committed torts. As summarized in Count V of the Complaint, at page 49 thereof, Count V sets forth:

> " 1. This Count V is a cause of action under common law against Defendants Sky Bryce Association, Inc., L.E. Hoole, individually, and in his capacity as President of the Sky Bryce Association, Inc., Denise F. Barb, in her capacity as Clerk of Shenandoah County Circuit Court, in Virginia, acting as an agent for the Judicial Branch of the government of the Commonwealth of Virginia, and *John Doe*, all acting jointly, who had a duty to deal with Plaintiff lawfully and constitutionally and who breached that duty knowingly, willfully, and with wanton disregard of the consequences to Plaintiff, in that Defendants Sky Bryce Association, Inc., L.E. Hoole, individually, and in his capacity as President of the Sky Bryce Association, Inc., and *John Doe*, all acting jointly, knowingly deprived the Plaintiff of a significant property interest without constitutional due process, by filing two June 28, 1996 POA liens against Plaintiff, as named lienee, created under the Virginia Property Owners Association Act, particularly *Virginia Code §55-514* through *§55-516*, without constitutional due process."

III. CONCLUSION

In conclusion, the court is mindful that the plaintiff is a *pro se* litigant and that, pursuant to Fed. R. Civ. P. 12(b)(6), the plaintiff is entitled to extremely liberal review on a motion to dismiss. Yet again, however, as in Mr. Breedlove's multitude of past challenges to the VPOAA, the facts alleged by the plaintiff simply do not state a cause of action upon which relief could be granted as against any defendant. The court, then, will grant the defendants' motions to dismiss.

In the court's view, finally, Mr. Breedlove's Complaint is sanctionable under Fed. R. Civ. P. 11(b) in that it likely is presented to harass the defendants or cause needless increase in their litigation costs and because it certainly is unwarranted in existing law.[25] Nevertheless, the court admonishes Mr. Breedlove to consider carefully the possible adverse consequences to bringing further cases asserting issued which have been decided previously adversely to his position. The sanctions of Rule 11 may apply to further suits of the nature and substantive allegations of the instant action.

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[25] Breedlove denies this allegation and any adverse inferences arising from it. Breedlove aserts that his cases have been brought in good faith and the instant two cases have been drafted carefully to bracket particular issues in seeking determination of the constitutionality of the VPOAA lien law. Contrary to Judge Michael's misrepresentation in Note 1 of the November 13, 1997, *memorandum opinion* — that the two cases are "virtually identical"— the *Sky Bryce* case, for example, alleges that the defendants employed 1996 Virginia property owner association liens ***lawfully***, while the *Mihalik* case alleges that the defendants employed 1994 Virginia property owner association liens *unlawfully*. Lawful invocation of a State statute — when that State statute is challenged subsequently for constitutionality— is one element of a cause of action under § 1983. (*Keystone Builders v. Floor Fashions of Virginia*, 829 F.Supp. 181, 183, note 1, (W.D. Va. 1993) (Michael, J.), *citing Lugar v. Edmondson Oil Co.*, 457 U.S. at 942, 102 S.Ct. at 2756, 73 L.Ed.2d at 498-499, (1982), pleaded in the June 27, 1997, Complaint in Count I, at page 27 thereof.

Also, the *Sky Bryce* case includes — in addition to three 42 USC §1983 counts — a count for declaratory judgment of unconstitutionality as to the Virginia Property Owners Association lien law, on its face, pursuant to 28 USC §2201, and a count for common law constitutional tort by defendants. The *Mihalik* case contains only a single 42 USC §1983 count. Each case needs proof by different sets of facts, making them each unique cases.

An appropriate Order shall issue this day.

ENTERED: (signed) *Jas. H. Michael, Jr.*
Senior United States District Judge

13 November, 1997
Date

Exhibit 13 Copy of December 12, 1997, Order Denying Rehearing by Federal District Court[26]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KENDALL H. BREEDLOVE, Plaintiff	) CIVIL ACTION) NO. 97-0041-H
v.	)
SKY BRYCE ASSOC., INC., L.E. HOOLE, DENISE F. BARB, JOHN DOE AND OTHERS UNKNOWN THE COMMONWEALTH OF VIRGINIA, Defendants.	) ORDER))))) JUDGE JAMES H.) MICHAEL, JR.

Upon consideration of the plaintiff's November 21, 1997 Motion for Rehearing, the court finds that the motion is not well-taken. Because Mr. Breedlove offers the court no reason not already considered by the court in dismissing his complaint by Order and accompanying Memorandum Opinion of November 13, 1997, there is no need for a rehearing on this matter. Accordingly, it is this day

ADJUDGED AND ORDERED

that the plaintiff's November 21, 1997 Motion for Rehearing shall be, and it hereby is, DENIED. This case shall be, and it hereby is, DISMISSED and STRICKEN from the docket of this court.

The Clerk of the Court hereby is directed to send a certified copy of this Order to all counsel of record and to *pro se* plaintiff.

ENTERED: (signed) *Jas. H. Michael, Jr.*
Senior United States District Judge
Dec. 12, 1997
Date

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[26] This order failed to address Plaintiff's unresolved October 17, 1997, complaint of falsified official case records or to address Plaintiff's unresolved October 17, 1997, criminal charges lodged against court officers.

Exhibit 14 Copy of December 12, 1997, Order Denying Rehearing by Federal District Court [27]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KENDALL H. BREEDLOVE, Plaintiff	)	CIVIL ACTION NO. 95-0055-H
	)	
v.	)	ORDER
	)	
JAMES J. MIHALIK, ET AL., Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

Upon consideration of the plaintiff's July 15, 1996 Motion for Rehearing, the court finds the following.

The court drafted an Order denying the plaintiff's instant motion on or about July 20, 1996. By inadvertence, the Order was never entered or docketed by the Clerk and, consequently, the motion remains pending. Because Mr. Breedlove offers the court no reason not already considered by the court in dismissing his complaint by Order and accompanying Memorandum Opinion of July 11, 1996, there is no need for a rehearing on this matter. Accordingly, it is this day

ADJUDGED AND ORDERED

that the plaintiff's July 15, 1996 Motion for Rehearing shall be, and it hereby is, DENIED. This case shall be, and it hereby is, DISMISSED and STRICKEN from the docket of this court.

The Clerk of the Court hereby is directed to send a certified copy of this Order to all counsel of record and to *pro se* plaintiff.

ENTERED: (signed) *Jas. H. Michael, Jr.*
Senior United States District Judge
Dec. 12, 1997
Date

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[27] This order failed: (1) to rule on Plaintiff's unresolved June 3, 1996, motion for judicial notice of four memoranda, one transcript, and one exhibit filed in open court; (2) to address or correct Plaintiff's July 8, 1996, complaint of falsified official case records; or (3) to address Plaintiff's July 8, 1996, unresolved criminal charges lodged against court officers in the instant case.

Exhibit 15 Fact Pattern in Breedlove v. Mihalik, et al. (W.D. Va. civil action no. 95-0055-H)

1. A 10-page exhibit by Petitioner, entitled, "Complainant's [Breedlove's] Exhibit A, Application of Updated *Doehr*-version of the Three-Part *Mathews* Test," dated November 2, 1995, supporting Petitioner's oral argument in a November 2, 1995, hearing in the *Mihalik* case, disappeared from the record after that exhibit had been tendered to Magistrate Crigler and had been accepted in open court into the record.

a. The missing exhibit — "Complainant's Exhibit A" — set forth an application by Petitioner to the Virginia property owners association lien law of the updated *Doehr*-version of the three-part *Mathews* test set forth by the U.S. Supreme Court for testing the constitutionality of a State statute in the context of private-party-instituted deprivation of constitutionally-protected right.

b. Petitioner's analysis and conclusion — that the Virginia property owners association lien law was unconstitutional — ran contrary to the purported constitutionality analysis developed and set forth by Magistrate Crigler in the Magistrate's December 27, 1995, *Report and Recommendation*. Magistrate Crigler's constitutionality analysis was not accepted by District Judge Michael, who put forth no constitutionality analysis of his own.[28]

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[28] Judge Michael, as the district judge reviewing the Magistrate's Report, adopted only the Magistrate's recommendation that plaintiff Breedlove's complaint be dismissed and failed to adopt — thus rejecting — the Magistrate's constitutionality analysis.

District Judge Michael's July 1, 1996, *dismissal order* stated: "For reasons stated in the accompanying Memorandum Opinion, it is this day ADJUDGED AND ORDERED that the Report and Recommendation of the Magistrate filed on December 27, 1995, shall be, and it hereby is, adopted **to the extent** that it recommends plaintiff's complaint be dismissed in its entirety." [*Bold emphasis added by Petitioner.*]

Judge Michael's July 1, 1996, Memorandum Opinion stated, at page 2: "The Magistrate dismissed plaintiff's claim, upholding the constitutionality of the POAA [Property Owners Association Act] because he found that it provided safeguards under *Connecticut v. Doehr*, 501 U.S. 1 (1991). The court finds, however, that it need not reach the question whether the POAA is constitutional. Plaintiff's suit against defendants cannot proceed for a simpler reason: defendants are not state actors and therefore cannot be sued under § 1983."

c. Petitioner has alleged previously that, on or about November 2, 1995, Magistrate B. Waugh Crigler after accepting in open court the 10-page "Complainant's [Breedlove's] Exhibit A, Application of Updated *Doehr*-version of the Three-Part *Mathews* Test," dated November 2, 1995, and stating that Magistrate Crigler would have the exhibit added to the record, caused "Complainant's Exhibit A" to be concealed, removed, or destroyed and not admitted to record.

d. Petitioner has alleged previously that, on or shortly after November 2, 1995, Clerk of the Court Morgan E. Scott, Jr., caused the "Complainant's Exhibit A" not to be docketed in the civil docket summary for the *Mihalik* case, as demonstrated by the *civil docket summaries* of May 22, 1996 3:39 pm and June 21, 1996 2:42 pm in the *Mihalik* case (reproduced as Exhibits 2 and 3 to *Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Violations*, dated July 8, 1996, in *Breedlove v. Mihalik, et al.*, at pages A3-A8, thereof). This overt act occurred even though the Clerk knew or should have known of the acceptance into the record of "Complainant's Exhibit A," through the courtroom deputy and official court reporter, J. Turner, who is a member of the Clerk's staff, and even though there is a docket entry dated 11/2/95 in the *civil docket summary* for a "Motion hearing" held by Magistrate Crigler on November 2, 1995, which cites J. Turner's audio tape recording of the oral proceedings on tape 3, index 0-1324.

2. Petitioner filed timely by certified mail two memoranda of objections to the Magistrate's December 27, 1995, *Report and Recommendation,* dated January 5 and 6, 1996, in the *Mihalik* case. One or more persons performed overt acts in the federal district court's Clerk's office and in the U.S. Post Office at Harrisonburg, Virginia, to cause the appearance falsely that Petitioner's objections were filed untimely, by misrepresenting the conditions surrounding the receipts of these two memoranda and by tampering the dates of the certified mail pieces' deliveries, including concealing, removing, or destroying U.S. Postal Service certified-mail records.

a. On January 11, 1996, deputy clerk Dee Sims recorded in the civil docket summary for the *Mihalik* case, the receipt of timely-filed *Plaintiff's* [Breedlove's] *Supplementary Memo-*

randum in Opposition to the Magistrate's Report and Recommendation, dated January 6, 1996, on a date (January 11, 1996) creating the appearance of Breedlove's *supplemental memorandum* being untimely filed and with the docket entry failing to include, thus concealing, the January 6, 1996, service date and filing by certified mail and the supplementary nature of Breedlove's January 6, 1996, *supplementary memorandum*.

b. On January 17, 1996, deputy clerk Dee Sims recorded in the civil docket summary for the *Mihalik* case, the receipt of timely-filed *Plaintiff's* [Breedlove's] *Memorandum in Opposition to the Magistrate's Report and Recommendation,* dated January 5, 1996, on a date (January 17, 1996) creating the appearance of Breedlove's *memorandum* being untimely filed and with the docket entry failing to include, thus concealing, the January 5, 1996, service date and filing by certified mail of Breedlove's January 5, 1996, *memorandum*.

3. On June 4, 1996, personnel in the Clerk's office **failed to docket** Breedlove's *praecipe and notice*, dated June 3, 1996, and **failed to schedule** the requested June 14, 1996, hearing or ruling date for Breedlove's two noticed June 3, 1996, *motions*.

a. On June 4, 1996, deputy clerk P. Hensley received Breedlove's two June 3, 1996, motions and June 3, 1996, *praecipe and notice.* Breedlove had noticed these two motions for ruling without oral argument on June 14, 1996, by *praecipe and notice*, dated and served June 3, 1996, and filed by certified mail # P 310-160-667, with green return receipt signed for as acknowledging receipt at the federal district court on June 4, 1996, by P. Hensley.

b. A recording deputy clerk, with the initials "dh" made entries, dated 6/4/96, in the *civil docket summary* in the *Mihalik* case, for each of Breedlove's two June 3, 1996, motions; however, deputy clerk "dh" made no entry for the receipt on June 4, 1996, of Breedlove's *praecipe and notice* for these two June 3, 1996, *motions,* for ruling on June 14, 1996. The recording deputy clerk, "dh," failed to make entry in the *civil docket summary* scheduling the June 14, 1996, ruling or hearing date.

4. On June 14, 1996, District Judge James H. Michael, Jr., failed to rule upon or enter any dispositive order subsequently for two motions: (1) *Plaintiff's* [Breedlove's] *Motion for Judicial Notice: (a) of Plaintiff's Two Memoranda in Opposition to Defendants' Motion to Dismiss; (b) of Transcript of November 2, 1995, Hearing; (c) of Exhibit Filed in Open Court on November 2, 1995; and (d) of Plaintiff's Two Memoranda Objecting Timely to the Magistrate's Report and Recommendation*, dated June 3, 1996; and (2) *Plaintiff's* [Breedlove's] *Motion for District Judge's De Novo Ruling, pursuant to 28 USC §636(b)(1), on Magistrate's Report and Recommendation and Plaintiff's Objections Thereto*, dated June 3, 1996. This failure to rule is documented through absence of disposition for these two motions in the *dismissal order* of July 1, 1996, and in the *order* denying rehearing, dated December 12, 1997. These were the only *orders* in the *Mihalik* case, subsequent to the June 14, 1996, noticed date for ruling on these two motions.

5. On July 1, 1996, District Judge James H. Michael, Jr., entered *dismissal order* in the *Mihalik* case, dismissing the case in its entirety, (1) prior to the Court resolving Breedlove's stated complaint in open court on June 21, 1996, that the official record failed to present either fairly or accurately the pleadings filed or the dates of their filings; (2) prior to the Court receiving Breedlove's memorandum to correct the record, filed response to Judge Michael's direction in open court on June 21, 1996, to file such a memorandum; and (3) without ruling upon *Plaintiff's Motion for Judicial Notice*, dated June 3, 1996, and noticed for ruling June 14, 1996.

6. Judge Michael's dismissal of the *Mihalik* case, partially for plaintiff having pleaded the defendants' misapplication of the Virginia property owners associaion lien law — without ruling on the constitutionality of the Virginia property owners association lien law challenged therein, which he had himself certified as a constitutional challenge on July 11, 1995 — was at variance with Judge Michael's own precedent from *Keystone Builders v. Floor Fashion of Virginia*, 829 F.Supp. 181, 183 (W.D. Va. 1993). In *Keystone*, in a case where the plaintiff had

pleaded the misapplication of the Virginia attachment law, Judge Michael dismissed the *Keystone* case as to the defendants, but still ruled on the constitutionality of the Virginia attachment law — adjudicating the Virginia attachment law to be constitutional.

7. Petitioner filed a July 8, 1996, *memorandum* to correct the federal district court's record, in direct response to District Judge Michael's direction in open court to file such a memorandum, after Petitioner complained in open court June 21, 1996, that the court's record did not present fairly or accurately the proceedings had before the court in the *Mihalik* case. In that July 8, 1996, *memorandum* — filed with the court and a copy sent by certified mail directly to Judge Michael's chambers — Petitioner lodged criminal charges against Magistrate Crigler and Clerk Scott for conspiracy against the rights of citizens, in violation of 18 USC §241, and against Magistrate Crigler for concealment, removal, or destruction of a federal court record, a violation of 18 USC §2071.

8. After Petitioner's June 21, 1996, open-court complaint against the court's records in the *Mihalik* case, and before Petitioner could complete and file his 24-page *memorandum* with 35-page appendix of evidentiary exhibits, dated July 8, 1996, District Judge Michael dismissed the *Mihalik* case in its entirety, on July 1, 1996, while:

(a) not accepting any of the Magistrate's *Report and Recommendation*, except that the case be dismissed;

(b) failing to rule upon or make disposition of Petitioner's *motion* dated June 3, 1996, for judicial notice of: (a) of plaintiff's two *memoranda* in opposition to defendants' motion to dismiss; (b) of *transcript* of November 2, 1995, hearing; (c) of exhibit filed in open court on November 2, 1995; and (d) of plaintiff's two *memoranda* objecting timely to the Magistrate's *report and recommendation;*

(c) failing to set forth a constitutionality ruling on the Virginia property owners association lien law (or abstaining formally), even though Judge Michael had certified the constitutional challenge at the commencement of the litigation;

(d) failing to cause any correction of the federal court's record, even though the record was clearly inaccurate and unfair in its presentation of the course of proceedings in the *Mihalik* case;

(e) failing to acknowledge the criminal charges lodged by Petitioner or demonstrate in any way that Judge Michael initiated or caused criminal investigation of the charges.

9. Petitioner filed *motion* dated July 11, 1996, for rehearing of the July 1, 1996, dismissal. Judge Michael failed to enter order in the *Mihalik* case denying the July 11, 1996, *motion for rehearing* **until 18 months later** — on December 12, 1997 — and after relying on his own ruling in the still-pending *Mihalik* case both as *res judicata* and as *stare decisis* precedent in ruling upon the *Sky Bryce* case, to dismiss the *Sky Bryce* case. Failure to rule upon and enter a prompt order denying Petitioner's *motion for rehearing* kept the *Mihalik* case in judicial limbo — without a final order — and prevented Petitioner from having timely appeal of that decision.

10. Judge Michael's December 12, 1997, order denying rehearing was silent as to the criminal charges lodged by Petitioner against court personnel for their criminal interference in Petitioner's litigation.

11. Petitioner followed up to verify the certified-mail delivery dates to the court for Petitioner's *memorandum of objections*, by filing a PS form 3811-A, return receipt (after mailing) with the U.S. Postal Service. The particular PS form 3811-A was concealed, removed, or destroyed by one or more persons at the Harrisonburg Post Office, after being signed for by Kay T. Shirkey.

12. Petitioner lodged criminal charges for violations of Title 18 of the United States Code by employees of the Harrisonburg, Virginia, Post Office with Mr. Kenneth J. Hunter, Chief Postal Inspector for the U.S. Postal Inspection Service, by letter complaint and criminal information *affidavit*, entitled, "Letter and criminal information *affidavit* number USPS 3, charging one or more Postal Service officers or employees with violations of title 18 of the United States Code, in particular for violation of 18 USC §2071, for concealment, removal or destruction of Government records," dated September 14, 1996, sent by certified mail # P 139-877-141, with return receipt signed for as received at Postal Service headquarters by "RG Lake," on

September 16, 1996. These September 14, 1996, charges went unacknowledged and without any evidence of criminal investigation.

13. The subsequent year, on October 7, 1997, in open court at a purported "pre-trial conference" in the *Sky Bryce* case, Magistrate B. Waugh Crigler produced a document in open court purported to be the *Complainant's Exhibit A*, dated November 2, 1995, tendered to and accepted by Magistrate Crigler in a November 2, 1995, hearing in the *Mihalik* case, which exhibit had been concealed or removed from the official court record in *Breedlove v. Mihalik.*

Exhibit 16 Fact pattern in Breedlove v. Sky Bryce Association, et al., (W.D. Va. civil action no. 97-0041-H)

1. In the *Sky Bryce* case, Petitioner sent defendant L.E. Hoole three "waiver of service of summons" forms by mail, for Mr. Hoole's signature — one form for each of the three capacities in which defendant Hoole was being served. Mr. Hoole signed and returned only one "waiver of service of summons" form and failed to specify in which of his three capacities he was waiving formal service of summons.

2. Mr. Hoole sent Petitioner Breedlove a letter dated July 14, 1997, enclosing the signed "waiver of service of summons" form, dated July 14, 1997. The two documents were enclosed in an envelope postmarked July 15 PM 1997 from Charlottesville, Virginia 22906, which envelope bore Mr. Hoole's return address in Basye, Virginia. Mr. Hoole's letter displayed on its face a courtesy copy sent to the Clerk's Office of the U.S. District Court, in Harrisonburg, Virginia. Basye and Charlottesville, Virginia, are about 80-100 miles apart. None of the defense counsels have an office in Charlottesville, Virginia, but the U.S. District Court for the Western District of Virginia is headquartered in Charlottesville. The Harrisonburg division of the Court, in which the case was filed and where the records were maintained, is located in Harrisonburg, Virginia — perhaps about 60-80 miles from Charlottesville.[29]

3. As a result, on August 6, 1997, Petitioner Breedlove mailed a letter to defendant L.E. Hoole, as to: (1) providing three *alias* waiver of service forms for defendant L. E. Hoole to sign in each of his three capacities; (2) warning defendant L.E. Hoole of Petitioner's suspicions of a criminal conspiracy against the rights of citizens, in violation of 18 USC §241; and (3) expressing Petitioner's concern that defendant Hoole have adequate civil representation by counsel and that, perhaps,

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[29] From the postmarking of this July 15, 1997, envelope — at a substantial distance from Mr. Hoole's home and from a city where Mr. Hoole's defense counsel did not have an office — Petitioner Breedlove infers the convening of an *ex parte* meeting between Mr. Hoole, one or more defense counsels, and one or more officers of the U.S. District Court at the federal courthouse in Charlottesville, Virginia.

defendant Hoole may wish to consult legal counsel as to any criminal liability which defendant Hoole may or may not have.

4. Also on August 6, 1997, Petitioner filed with the Clerk of the Court by certified mail (receipt acknowledged as of August 8, 1997) a copy for the court of Petitioner's August 6, 1997, letter to defendant L.E. Hoole.

5. Mr. Hoole sent Petitioner Breedlove a second letter dated August 13, 1997, enclosing three signed "waiver of service of summons" forms, dated August 13, 1997. The four documents were enclosed in an envelope postmarked August 15 PM 1997 from Charlottesville, Virginia 22906, which envelope bore no return address. Mr. Hoole's letter displayed on its face a courtesy copy sent to the Clerk's Office of the U.S. District Court, in Harrisonburg, Virginia.[30]

6. On August 27, 1997, Mr. Morgan E. Scott, Jr., Clerk of the U.S. District Court for the Western District of Virginia, issued a "Notice," scheduling a hearing for a purported "pre-trial conference" as the first hearing in the case, to be held October 7, 1997, at 12:00 noon in Harrisonburg, Virginia. The *notice* was signed on behalf of the Clerk by Ms. Dee Sims, a deputy clerk. From the courtesy copies listed on the face of the notice, it appeared to Petitioner that the "pre-trial conference" was to be held before U.S. Magistrate Judge B. Waugh Crigler. Prior to this August 27, 1997, notice, there had been no indication of any processing of the *Sky Bryce* case before a Magistrate.

7. Included with the Petitioner's copy of the August 27, 1997, *notice*, the Clerk had included a "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate" form, which directed that the form should be signed and returned to the Clerk's office within 15 days if the party wished

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[30] From the postmarking of this July 15, 1997, envelope — at a substantial distance from Mr. Hoole's home and from a city where Mr. Hoole's defense counsel did not have an office — Petitioner Breedlove infers the convening of an *ex parte* meeting between Mr. Hoole, one or more defense counsels, and one or more officers of the U.S. District Court at the federal courthouse in Charlottesville, Virginia.

to consent voluntarily to magistrate jurisdiction. The *notice* informed parties, in part, that:

> "Exercise of this [the Court's] jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.
>
> " You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge."

Petitioner Breedlove chose to withhold his voluntary consent to magistrate jurisdiction, and chose not to sign or to return the *right to consent* form to the Clerk within the 15 days specified in the form if a party wished to consent voluntarily to magistrate jurisdiction.

8. On August 28, 1997, defense counsel for defendant Denise F. Barb (Clerk of the Shenandoah County Circuit Court and a constitutional officer of the Commonwealth of Virginia) served upon Petitioner Breedlove by mail a copy of a federal district court form entitled, "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate," executed in the affirmative, consenting to jurisdiction of a U.S. Magistrate Judge of the U.S. District Court for the Western District of Virginia.

9. Also on August 28, 1997, defense counsel for defendants Sky Bryce Association, Inc., and L.E. Hoole (its president) served upon Petitioner Breedlove by mail a copy of a federal district court form entitled, "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate," executed in the affirmative, consenting to jurisdiction of a U.S. Magistrate Judge of the U.S. District Court for the Western District of Virginia.

10. On September 2, 1997, Senior Assistant Attorney General Gregory E. Lucyk, defense counsel for the Commonwealth of Virginia, served upon Petitioner Breedlove by mail a copy of a federal district court form entitled, "Notice to Parties of Right to Consent to Jurisdiction of United States

Magistrate," executed in the affirmative, consenting to jurisdiction of a U.S. Magistrate Judge of the U.S. District Court for the Western District of Virginia.

11. Mr. Lucyk did not claim special appearance or limit his general appearance on behalf of Virginia in any way. Mr. Lucyk did not — in this initial filing — contest the jurisdiction of the federal district court, but consented to that jurisdiction for trial by a U.S. Magistrate Judge.

12. On September 18, 1997, when Petitioner made a personal examination of the official court case file for the *Sky Bryce* case at the Clerk's office there was no copy of Petitioner's August 6, 1997, letter in the court file and no entry in the September 18, 1997, 1:08 pm civil docket summary recording the receipt of Petitioner's August 6, 1997, letter. The details of Petitioner's examination and its findings are documented in an *affidavit* prepared by Petitioner and executed September 20, 1997. Petitioner concluded that one or more persons in the Clerk's office had concealed, removed, or destroyed the court's copy of the August 6, 1997, letter (a violation of 18 USC §2071). Petitioner also concluded that such concealment, removal, or destruction of the court's copy of the August 6, 1997, letter was done to conceal the Petitioner's suspicions of a criminal civil rights' conspiracy, in violation of 18 USC §241, from the eyes of a federal judge.

13. On September 18, 1997, Petitioner filed four pleadings. Among them were the following:

a. Petitioner filed a *motion for the district judge, as trial judge, to confirm the court's notice jurisdiction* as to defendants Sky Bryce Association, Inc., L.E. Hoole (association president), Denise F. Barb (Clerk of the Shenandoah County Circuit Court and a constitutional officer of the Commonwealth of Virginia), and The Commonwealth of Virginia.

b. Petitioner filed *Plaintiff's memorandum in opposition to Defendants Sky Bryce and L.E. Hoole's motion to dismiss*, which contained "Section II, Related Civil Cases and Pending Criminal Charges Against Western District Personnel," at pages 3-7. The officiating deputy clerk, D. Sims, first stamped the memorandum as "FILED," then crossed out the "FILED" indicia, and handwrote "Received." The memorandum appears to have been ignored by Judge Michael.

14. On September 29, 1997, Petitioner Breedlove attached his "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate" form, marked "Voluntary consent withheld," and unsigned to Petitioner's *motion to the district judge, as trial judge, to forbid any processing by any magistrate judge*, dated September 29, 1997.

15. On October 2, 1997, Petitioner filed a *motion to Judge Michael, the district judge, as trial judge, for determination of conflict of interest* as to one defense counsel of one law firm representing a corporate defendant, a corporate officer in both his official capacity and in his individual capacity, and an insurance company, in its capacity as insurer, when the law firm has self-interest in the instant case.

16. On October 7, 1997, a pre-trial conference was held, over the objections of Petitioner, as the first hearing in the *Sky Bryce* case. Magistrate B. Waugh Crigler conducted the hearing. Petitioner asked in open court that Magistrate Crigler recuse himself for three reasons: (1) for actual bias, (2) for the appearance of bias, for sitting in judgment of Petitioner when Petitioner had lodged criminal charges against Magistrate Crigler and when Magistrate Crigler stated in open court that he, Crigler, intended to rule upon motions addressed explicitly to the District Judge (Michael), and (3) for criminal charges Petitioner had lodged previously against Magistrate Crigler for conspiracy against the rights of citizens, in violation of 18 USC §241.

a. Magistrate Crigler refused to recuse himself, and he, himself, ruled on and denied Petitioner's two motions: (1) *motion to Judge Michael, the district judge, as trial judge, to forbid any hearings before or participation by U.S. Magistrate B. Waugh Crigler*, dated September 29, 1997, and (2) *motion to Judge Michael, the district judge, as trial judge, to forbid processing of this case by any Magistrate Judge*, dated September 29, 1997.

b. Petitioner had filed these two motions, based upon (1) Petitioner's experience with Magistrate Crigler in *Breedlove v. Mihalik, et al.*, wherein Magistrate Crigler had misrepresented both plaintiff's and defendants' arguments in the Magistrate's December 27, 1995, *Report and Recommendation*, and (2) the criminal charges lodged by Petitioner against Magistrate Crigler for concealment, removal or destruction of a filed court document in *Breedlove v. Mihalik, et al.*, in violation of 18 USC §2071, and for conspiracy against the rights of citizens, in violation of 18 USC §241.

c. On October 7, 1997, Magistrate Crigler produced a file said to be the official court case file of *Breedlove v. Mihalik* in open court, displayed the file purportedly as including a document (beyond visual range in open court) purported to be the missing *Complainant's Exhibit A*, dated November 2, 1995.

d. The *civil docket summary* as of January 29, 1998 9:13 am — as transmitted to the Fourth Circuit Court with the record on appeal from the federal district court — failed to list any docket entry for the still-missing *Complainant's Exhibit A*, dated November 2, 1995.

17. Also on October 7, 1997, Petitioner purchased a court-certified copy of the *civil docket summary* in the *Sky Bryce* case, as of October 7, 1997 10:56 am. This October 7, 1997 10:56 am *civil docket summary* demonstrates that the Clerk of the Court **failed to docket any of the three jurisdictional forms**:

a. the August 28, 1997, "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate," executed in the affirmative by defense counsel for defendant Denise F. Barb (Clerk of the Shenandoah County Circuit Court and a constitutional officer of the Commonwealth of Virginia), consenting to jurisdiction of a U.S. Magistrate Judge;

b. the August 28, 1997, "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate," executed in the affirmative by defense counsel for defendants Sky Bryce Association, Inc., and L.E. Hoole (its president), consenting to jurisdiction of a U.S. Magistrate Judge;

c. the September 2, 1997, "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate," executed in the affirmative by Senior Assistant Attorney General Gregory E. Lucyk, defense counsel for the Commonwealth of Virginia, consenting to jurisdiction of a U.S. Magistrate Judge of the U.S. District Court for the Western District of Virginia.[31]

18. In order entered October 10, 1997, Magistrate B. Waugh Crigler prohibited Breedlove from filing any further pleadings until after the November 14, 1997, hearing on defendants' *motions to dismiss*, which the Magistrate scheduled for hearing before the district judge. This prohibition on Petitioner filing any pleadings was entered despite the facts that (1) several prior defense pleadings were still within the pleading cycle and (2) the Magistrate explicitly granted defense counsel the opportunity to file response to Petitioner's October 2, 1997, *motion as to the defense attorneys' appearance of conflict of interest*, while forbidding Petitioner to file any responsive pleading in opposition to the defense counsel's new filing.

19. On October 17, 1997, Breedlove hand-filed *Plaintiff's appeal to the Senior District Judge, as a federal civil right under 28 USC §636 (b) (1), of the Magistrate's Order entered October 10, 1997, and of Magistrate B. Waugh Crigler's refusal to recuse himself on the basis of bias, appearance of bias, and criminal charges lodged against Magistrate by Plaintiff in the*

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[31] Subsequent *civil docket summaries* of November 14, 1997 11:14 am (court-certified copy purchased by Breedlove) and of January 29, 1998 10:50 am (transmitted by the federal district court to the Fourth Circuit Court, with a raised-seal, court-certified copy, attested by D. Sims, deputy clerk, served upon Breedlove) demonstrate no change in these failures to docket three jurisdictional forms — each of these three *consent* forms executed by defense counsels remained concealed from the official record.

The missing jurisdictional forms executed by the respective defense counsels demonstrated that both an officer of Virginia and the Commonwealth of Virginia submitted voluntarily to the jurisdiction of the U.S. District Court for the Western District of Virginia. Subsequently, the defense counsels asserted in their motions to dismiss that their officer and Commonwealth clients were not subject to the jurisdiction of the court.

Breedlove alleges that one or more employees of the federal district court concealed, removed, or destroyed the three jurisdictional forms to cure the tactical mistake of the defense counsels representing an officer of Virginia and the Commonwealth itself, submitting their clients voluntarily to the jurisdiction of the federal district court.

Brdlove still has his service copies of each of the three executed jurisdictional forms, of which the official file originals have now disappeared.

instant case. Petitioner complained in his motion of: (1) lack of magistrate jurisdiction, (2) actual bias, (3) appearance of bias, (4) magistrate's self interest as to criminal charges, (5) usurping the power of the district judge, and (6) oppressive abuse of power and violation of procedural due process. This *appeal* was set for hearing on November 14, 1997, before Senior District Judge Michael. It was never heard or ruled upon.

20. On October 17, 1997, while at the Clerk's office, Petitioner again made a personal examination of the official court case file for the *Sky Bryce* case. Again there was no copy of Petitioner's August 6, 1997, letter in the court file. The details of Petitioner's examination and its findings are documented in an *affidavit* prepared by Petitioner and executed October 18, 1997. This finding strengthened Petitioner's conclusion that one or more persons in the Clerk's office had concealed, removed, or destroyed the court's copy of the August 6, 1997, letter — that the document was not merely out of the file for some reason.

21. On November 13, 1997, one day before the scheduled hearing before Senior District Judge Michael of defendants' *motions to dismiss*, plaintiff's *appeal* of the Magistrate's October 10th order, and plaintiff's *motion for determination of defense counsel's conflict of interest*, Judge Michael dismissed the case in its entirety.

a. Senior District Judge Michael **failed to hear** and denied six of Petitioner's motions, including a *motion to certify the constitutional challenge, pursuant to 28 USC §2403(b)*, a *motion for determination of defense counsel's conflict of interest*, and a *motion to confirm the notice jurisdiction of the court*.

b. Senior District Judge Michael **failed to rule on** or enter dispositive order concerning Petitioner's *appeal* of the Magistrate's October 10, 1997, order.

c. Senior District Judge Michael **failed to hear, failed to address, and failed to rule upon** *Plaintiff's* [Breedlove's] *Appeal to the Senior District Judge*, dated October 17, 1997, which *appeal* itself set forth additional criminal charges against

Magistrate Crigler, or referenced previous criminal charges against Magistrate Crigler and/or Clerk of the Court Scott, for:

(1) Conspiracy against the rights of citizens, in violation of 18 USC §241;

(2) Conspiracy to commit offenses against the United States or to defraud United States courts, in violation of 18 USC §371;

(3) Tampering with a witness, victim, or informant, in violation of 18 USC §1512;

(4) Concealment, removal, or mutilation [of an official record] generally, in violation of 18 USC §2071; and

(5) Misprision of felony, in violation of 18 USC §4.

22. On November 13, 1997, Judge Michael employed as *res judicata* factual matters from the *Mihalik* case, in which he had not yet entered final order, and employed the July 1, 1996, *memorandum opinion* from the *Mihalik* case as *stare decisis* precedent in dismissing the *Sky Bryce* case.

23. Judge Michael **misrepresented material fact** in his November 13, 1997, *memorandum opinion*, in Note 1, to-wit: "The instant case is virtually identical to that brought by plaintiff in *Breedlove v. Mihalik, et al.*, Civil Action No. 95-0055-H, (W.D. Va. July 1, 1996) (Michael, J.). * * * The 'substantive' claims remain identical." Judge Michael implied falsely that Breedlove had pleaded misapplication of state statute in each case.

24. On December 12, 1997, Judge Michael entered two orders denying rehearing in each of the *Mihalik* case and the *Sky Bryce* case.

25. Each of Judge Michael's *orders* and *memorandum opinions* were silent as to the criminal charges lodged against personnel of the federal district court, and Judge Michael covered-up those charges by his willful silence.

Exhibit 17 Fact Pattern in the appeal of Breedlove v. Mihalik, et al. (C.A.4 docket no. 98-1063)

1. On January 29, 1998, deputy clerk Dee Sims at the federal district court transmited to the U.S. Court of Appeals for the Fourth Circuit a "transmittal of record" *transmittal sheet*, dated January 29, 1998, a copy of the civil docket summary as of January 29, 1998 9:13 am, and the purported original court record (consisting of one volume of pleadings and two volumes of transcripts) in *Breedlove v. Mihalik, et al.* Clerk of the Court Morgan E. Scott, Jr. **failed to certify** the record on appeal, as transmitted to the Fourth Circuit Court, as being the "true record and proceedings."

2. The January 29, 1998, copy to Petitioner of the federal district court's transmittal of "transmittal of record" *transmittal sheet* and *civil docket summary* as of January 29, 1998 9:13 am, **failed to contain** any annexed *certification form* attested to by the Clerk of the federal district court. The January 29, 1998, *civil docket summary* **failed to state** either that the record was complete or that the record was certified. The January 29, 1998, "transmittal of record" *transmittal sheet* **failed to display** any marking in the "Transmittal of Certif." block, to indicate that the certification of the record was being transmitted.

3. On February 7, 1998, Petitioner filed his informal *brief for the appellant*, which set forth eight issues, including:

– Issue 5, "The federal district court's December 12, 1997, *order*, failed to correct material errors in the court's official record, as those errors are set forth in "Plaintiff's Memorandum To Correct the Court's Record From Inadvertent Errors and From Errors Introduced By Willful Civil Rights' Violations," dated July 8, 1996, filed in *Breedlove v. Mihalik, et al.*, (W.D. Va, CA-95-55-H ...);" and

– Issue 8, "The January 11, 1998, 10:46 AM *civil docket summary*, and the January 29, 1998, 9:13 AM *civil docket summary*, as transmitted [by the federal district court] to the Fourth Circuit Court, each contain one or more material errors and both the *civil docket summaries* and the record on appeal are uncertified."

4. On February 24, 1998, the counsel for appellees filed an *informal brief for the appellees* in opposition to Petitioner Breedlove's *brief*. Breedlove alleges:

– The *appellees' brief* misrepresented material fact, in that it alleged falsely that the district judge had accepted the magistrate's purported constitutionality analysis from the December 27, 1995, *Report and Recommendation*.

– The *appellees' brief* participated in the cover-up, by stating that "[a]t no time in this case has the district court in any way denied appellant [Breedlove] his procedural due process rights or his constitutional rights. Nor has the district court or this Court [the Fourth Circuit Court] committed any material errors."

– The *appellees' brief* is oppressive, in that it requests sanction against Petitioner Breedlove for the free exercise of his federal civil right under 28 USC §1291, to appeal an adverse district court ruling to the appropriate U.S. Court of Appeals. The *appellees' brief* requested that "[t]his Court [the Fourth Circuit Court] should impose sanctions on Plaintiff [Breedlove], including an award to these defendants for their attorneys' fees incurred in this appeal in the amount of $500.00, and **a ban on** [Breedlove] **filing cases in the future**, which, if such an injunction is violated, will subject Plaintiff to the contempt powers of the federal judiciary." [*Bold emphasis added by Petitioner Breedlove.*]

5. On June 8, 1998, Petitioner Breedlove filed *Appellant's motion for certification to Attorney General of Virginia, pursuant to 28 USC §2403(b), of constitutional challenge to Virginia property owners association lien law*. It was denied subsequently, on July 21, 1998, by the Fourth Circuit Court, which Court failed and refused to certify the constitutional challenge in the *Mihalik* half of the combined appeals, in accordance with 28 USC §2403(b).

6. June 16, 1998, in a *per curiam* order, issued by the Clerk "By Direction," the Fourth Circuit Court combined Petitioner Breedlove's two appeals, *Breedlove v. Mihalik, et al.*, and *Breedlove v. Sky Bryce Association, Inc., et al.*, one week after Petitioner's June 8, 1998, *motion to certify the constitutional challenge, pursuant to 28 USC §2403(b), and notify the Virginia Attorney General.*

7. On July 21, 1998, in an unpublished *per curiam* opinion in the combined appeals by a review panel consisting of Circuit Judges Niemeyer, Hamilton, and Hall, the Fourth Circuit Court:

(a) affirmed the lower court's dismissal of the case in the entirety, and omitted to make a constitutionality determination on the Virginia property owners association lien law;

(b) denied Petitioner Breedlove's *Appellant's motion for certification to Attorney General of Virginia, pursuant to 28 USC §2403(b), of constitutional challenge to Virginia property owners association lien law*, dated June 8, 1998; and

(c) denied Petitioner Breedlove's *Sworn Motion for the Fourth Circuit Court of Appeals to Cause the Correction and the Certification of Each of the False, Tampered, Incomplete, Uncertified Records on Appeal from the Federal District Court, in Each of the Two Instant Appeals*, dated July 1, 1998; and

(d) failed to acknowledge or to cause investigation of the criminal charges lodged by Breedlove in the *Mihalik* case against officers and employees of the U. S. District Court for the Western District of Virginia, Harrisonburg Division.

Exhibit 18 Fact Pattern in the appeal of Breedlove v. Sky Bryce Association, Inc., et al. (C.A.4 docket no. 98-1064)

1. On January 29, 1998, deputy clerk Dee Sims at the federal district court transmited to the U.S. Court of Appeals for the Fourth Circuit a "transmittal of record" *transmittal sheet*, dated January 29, 1998, a copy of the *civil docket summary* as of January 29, 1998 10:50 am, and the purported original court record (consisting of one volume of pleadings) in *Breedlove v. Sky Bryce Association, Inc., et al.* Clerk of the Court Morgan E. Scott, Jr. **failed to certify** the record on appeal, as transmitted to the Fourth Circuit Court, as being the "true record and proceedings."

2. The January 29, 1998, copy to Petitioner Breedlove of the federal district court's transmittal of "transmittal of record" *transmittal sheet* and *civil docket summary* as of January 29, 1998 10:50 am, **failed to contain** any annexed *certification form* attested to by the Clerk of the federal district court. The January 29, 1998, *civil docket summary* **failed to state** either that the record was complete or that the record was certified. The January 29, 1998, "transmittal of record" *transmittal sheet* **failed to display** any marking in the "Transmittal of Certif." block, to indicate that the certification of the record was being transmitted.

3. On February 7, 1998, Breedlove filed his informal *brief for the appellant*, which set forth seven issues, including:

– Issue 7, The January 10, 1998, 3:34 PM *civil docket summary*, and the January 29, 1998, 10:50 AM *civil docket summary*, as transmitted [by the federal district court] to the Fourth Circuit Court, each contain one or more material errors and both the *civil docket summaries* and the record on appeal are uncertified.

4. On February 24, 1998, the attorney for appellees Sky Bryce Association, Inc., and Hoole filed an *informal brief for the appellees* in opposition to Breedlove's *brief*. This *informal brief* was literally a xerographic copy of the appellees' brief in *Breedlove v. Mihalik, et al.*, with the case name and number

changed and minor variations overwritten by handwritten edits. The *informal brief for the appellees* misrepresents material fact as to the *Sky Bryce* appeal, because the brief is referring in actuality to events that occurred in the *Mihalik* case at the trial-court level and setting forth those events as fact, as though they had occurred in the *Sky Bryce* case before the trial court.

5. Also on February 24, 1998, the attorney for appellee Barb, Clerk of the Shenandoah County Circuit Court, and a constitutional officer of Virginia, filed an *informal brief* and entered appearance on behalf of appellee Barb. This one-page *informal brief* stated that the appellee relied upon the facts and the law stated in the November 13, 1997, *judgment order* and *memorandum opinion* of the federal district court. This brief demonstrates a reliance by appellee Barb upon the November 13, 1997, memorandum, which contained a misstatement of material fact in Note 1, to-wit: "The instant case is virtually identical to that brought by plaintiff in *Breedlove v. Mihalik, et al.*, Civil Action No. 95-0055-H, (W.D. Va. July 1, 1996) (Michael, J.). * * * The 'substantive' claims remain identical."

Exhibit 19 Fact Pattern in the combined appeals of Breedlove Sky Bryce Association, Inc., et al., and Breedlove v. Mihalik, et al. (C.A.4 docket nos. 98-1064 and 98-1063, respectively)

1. On July 1, 1998, Petitioner Breedlove filed *Appellant's sworn motion for the Fourth Circuit Court of Appeals to cause the correction and the certification of each of the false, tampered, incomplete, uncertified records on appeal from the federal district court, in each of the two instant appeals* (filed in the combined appeals, docket nos. 98-1063 and 98-1064).

2. On July 9, 1998, when Petitioner Breedlove made an inspection visit to the Fourth Circuit Court's Clerk's office, to examine the record on appeal in *Breedlove v. Mihalik, et al.*, (in the presence of a deputy clerk), Breedlove discovered and purchased a court-certified copy of a purported January 29, 1998, "certificate," which purported to certify the record on appeal although the "certificate" failed to contain language attesting to the verity and completeness of the record on appeal, and failed to bear the impression of the raised seal of the federal district court.

3. On July 9, 1998, there was no transmittal sheet, marked as "Transmittal of Certif.," in the record-on-appeal folder for *Breedlove v. Mihalik, et al.*, which Petitioner Breedlove examined. Petitioner Breedlove never received any service copy of such purported transmittal from the federal district court.

4. Petitioner Breedlove alleges that the purported January 29, 1998, "certificate" in *Breedlove v. Mihalik, et al.*, is a forgery and constitutes an affirmative act of cover-up, to conceal criminal activities by federal district court presonnel.

5. Also on July 9, 1998, when Petitioner Breedlove made an inspection visit to the Fourth Circuit Court's Clerk's office, to examine the record on appeal in *Breedlove v. Sky Bryce Association, Inc., et al.*, (in the presence of a deputy clerk), Breedlove discovered and purchased a court-certified copy of a purported January 29, 1998, "certificate," which purported to certify the record on appeal although the "certificate" failed to contain language attesting to the verity and completeness of the

record on appeal. The "certificate" bore the raised impression of the seal of the federal district court.

a. Details of Breedlove's July 9, 1998, examinations of the records are documented in contemporaneous *affidavit*, presented as Exhibit 8 in Breedlove's August 4, 1998, *petition for rehearing in banc* in combined docket nos. 98-1063 and 98-1064.

6. On July 9, 1998, there was no transmittal sheet, marked as "Transmittal of Certif.," in the record-on-appeal folder for *Breedlove v. Sky Bryce Association, Inc., et al.*, which Breedlove examined. Breedlove never received any service copy of such purported transmittal from the federal district court.

7. Breedlove alleges that the purported January 29, 1998, "certificate" in *Breedlove v. Sky Bryce Association, Inc., et al.*, is a forgery and constitutes an affirmative act of cover-up, to conceal criminal activities by federal district court presonnel.

8. On July 21, 1998, in memorandum opinion, the review panel comprised of Circuit Judges Niemeyer, Hamilton, and Hall affirmed the lower court's dismissal.

9. In the memorandum opinion, Circuit Judges Niemeyer, Hamilton, and Hall denied Petitioner Breedlove's two motions:

– June 8, 1998, *motion to certify the constitutional challenge, pursuant to 28 USC §2403(b), and notify the Virginia Attorney General* (filed in *Breedlove v. Mihalik*, docket no. 98-1064); and

– July 1, 1998, *Appellant's sworn motion for the Fourth Circuit Court of Appeals to cause the correction and the certification of each of the false, tampered, incomplete, uncertified records on appeal from the federal district court, in each of the two instant appeals* (filed in the combined appeals, docket nos. 98-1063 and 98-1064).

10. The three-judge review panel comprised of Circuit Judges Niemeyer, Hamilton, and Hall:

– **refused to cause correction** of falsified, tampered, uncertified record on appeal, or to obtain a complete, accurate, certified record from the federal district court;

– **refused** to have the Clerk of the Fourth Circuit Court show cause why a corrected and certified record had not been obtained in each of the two Breedlove appeals;

– **failed to address** on the record **criminal charges** lodged against federal district court personnel, when those charges were brought to their collective judicial notice;

– affirmed the lower-court dismissal, **based upon a falsified record on appeal**.

11. On August 4, 1998, Breedlove filed a 15-page *petition for rehearing in banc*, as a formal brief (with 47 pages of appendix exhibits), which included the *Affidavit of Kendall H. Breedlove, Appellant, as to events of July 9, 1998, at the Clerk's Office of the U.S. Court of Appeals for the Fourth Circuit.* This affidavit constituted an information of criminal violations of Title 18 of the United States Code and implicated persons at the federal district court in criminal activity.

12. Breedlove's *petition for rehearing in banc* set forth four areas in which the Fourth Circuit Court overlooked material law or material fact, and set forth allegations, with detailed, sworn supporting facts, that the Fourth Circuit Court based its opinion on the false, fraudulent, tampered, incomplete, purportedly-certified records from the federal district court.

13. On September 11, 1998, the Court denied Breedlove's *petition for rehearing in banc*, in a *per curiam* order issued by the Clerk.

14. The Court ignored the criminal charges lodged by Breedlove in his sworn *petition for rehearing in banc*, particularly issue IV, "A Pattern of Judicial Conduct Demonstrating: (1) a Criminal Conspiracy Against the Rights of Citizens, in violation of 18 USC §241, To Maintain Enforceability of Unconstitutional Virginia Law and To Evade Federal Constitutional Review, and (2) a Conspiracy To Commit

Offenses Against the United States and To Defraud United States Courts, in violation of 18 USC §371, To Cover-up Criminal Acts — Resulting in Denial of Procedural Due Process To Appellant and Converted into Denial of Appellant's Federal Constitutional Rights and Federal Civil Rights."

15. On September 21, 1998, the Court issued its mandate that the July 21, 1998, decision took effect that day. (See Exhibit 3, hereof.)

16. On October 8, 1998, Breedlove filed *notice of appeal*, with a request that the Court recall and stay its mandate pending review of the case by the U.S. Supreme Court. (See Exhibit 5, hereof.)

17. On October 8, 1998, Breedlove filed the required original and three copies of his notice of appeal by Federal Express, guaranteed next-day delivery, and had filed a duplicate original of his notice by certified mail # Z 084-210-**571**, with each delivery set being sent on October 8, 1998.

18. On October 9, 1998, at 9:52 AM, the Clerk's office affixed to Breedlove's October 8, 1998, Appellant's notice of appeal the blue-ink date-time stamp and "Filed" indicia of the U.S. Court of Appeals, Fourth Circuit, thus admitting Breedlove's notice of appeal to record. The particular original and three copies of Breedlove's notice of appeal – which the Clerk's office date stamped as "Filed" on October 9, 1998 – were clearly from the delivery set sent by Federal Express, guaranteed next-day delivery (Federal Express records show delivery of the FedEx letter to the Fourth Circuit Clerk's office at 9:41 AM on October 9, 1998).

19. On October 9, 1998, a deputy clerk with the initials "CW" made entry dated 10/9/98 in each of the two general dockets (nos. 98-1063 and 98-1064) stating "Pro Se writ for certiorari received and returned." Each of these two 10/9/98 entries is a false entry misrepresenting material fact, made separately in each of two official federal court dockets. Breedlove, the only pro se litigant in the appeals, sent no writ nor petition for writ of certiorari to the Fourth Circuit Court.

20. On October 13, 1998, enclosed with an October 13, 1998, letter signed by a deputy clerk (the first and last names of whom begin with the initials CW) on behalf of the Clerk of the Fourth Circuit, the Fourth Circuit Clerk's office returned to Breedlove the original notice of appeal – stamped with the Court's blue-ink October 9, 1998, date-time stamp and "Filed" indicia – and the accompanying three copies (of which one copy is stamped "Filed" October 9, 1998, in black ink).

21. On October 13, 1998, the Clerk's letter enclosing the original and three copies of Breedlove's notice of appeal, misrepresents material fact by stating, "I am returning your petition for writ of certiorari. This petition must be filed directly with the Clerk's Office for the Supreme Court in Washington. *** A copy of your petition has been retained for our files."

a. Breedlove did not file a *petition for writ of certiorari* – but rather his *notice of appeal* – and the Clerk's office did not enclose a *petition for writ of certiorari* – but rather the original and three copies of Breedlove's *notice of appeal* bearing the October 9, 1998, "FILED" indicia.

b. The October 9, 1998, "FILED" indicia is critical to demonstrate that Breedlove had filed his *notice of appeal* timely, – on October 9, 1998, the 28th day – within the prescribed 30 days from the Court's September 11, 1998, order denying rehearing.

22. On October 14, 1998, an agent for the Fourth Circuit Clerk's office, signed the green return receipt acknowledging receipt of certified mail # Z 084-210-**571**, containing the duplicate original of Breedlove's *notice of appeal*. The receiving signature was covered over by a white label approximately 1/2" x 4" in dimension.

23. On October 14, 1998, the Clerk's office failed to docket in the general dockets of either of the two appeals (docket nos. 98-1063 and 98-1064) the receipt on October 14th of the duplicate original of Breedlove's *notice of appeal*, and thus concealed the material fact of its existence and its filing.

24. The Clerk's office did not return the duplicate original of the *notice of appeal* to Breedlove. October 14th would be the 33rd day from September 11th, and had Breedlove's *notice of appeal* not been filed on October 9, 1998 – timely – it would be too late to initiate an appeal had Breedlove only filed his notice of appeal on October 14, 1998.

25. Breedlove alleges that one or more persons in the Clerk's office willfully falsified the Fourth Circuit Court's records, particularly the general docket and the appellate record, in violation of 18 USC §1001 – and that one or more persons in the Clerk's office willfully removed and concealed, or destroyed, official federal court records, particularly the October 9th "FILED" copies of Breedlove's *notice of appeal*, and the duplicate original of Breedlove's *notice of appeal*, received at the Court on October 14th, in violation of 18 USC §2071 – to create falsely the appearance of Breedlove never having filed *notice of appeal*, and never having requested that the mandate be stayed.

26. On October 21, 1998, Breedlove appeared personally in the Fourth Circuit Clerk's office and purchased court-certified copies of the general dockets of each appeal (docket nos. 98-1063 and 98-1064) as of October 21, 1998 3:22 PM.

27. On October 21, 1998, while at the Clerk's office, Breedlove examined personally the appellate file of each appeal (in the presence of a deputy clerk), made diligent search of each file's contents, and noted:

– no copy in either file of Breedlove's *notice of appeal* stamped as "FILED" October 9, 1998, or in any other condition, marked or unmarked;

– no copy in either file of the falsely-purported *petition for writ of certiorari*, of which the Clerk's October 13th letter stated the Court kept a copy;

– no copy in either file of Breedlove's *notice of appeal* stamped as either "FILED" or received October 14, 1998, or in any other condition, marked or unmarked.

a. Also, Breedlove requested to purchase from the Clerk's office a copy of the "Pro Se writ for certiorari," shown in each docket and was informed that the Court did not retain any copy of the document.

b. Details of Breedlove's October 21, 1998, examination of the records are documented in contemporaneous affidavit, entitled *Affidavit of Kendall H. Breedlove, Appellant, as to Events of October 21, 1998, at the Clerk's Office of the U.S. Court of Appeals for the Fourth Circuit*, presented as Exclosure 2 to *Appellant's Motion for Judicial Notice, In Accordance with Local Rule 40(d), As Ancillary to the Filing of an Application for Writ of Certiorari to the U.S. Supreme Court*, dated November 6, 1998 (filed in combined docket nos. 98-1063 and 98-1064).

28. On November 5, 1998, Petitioner Breedlove sent a letter to the Honorable J. Harvie Wilkinson, III, Chief Judge of the Fourth Circuit, double-enveloped and marked "For eyes only," subject, "Criminal charges lodged against the Clerk of the Court and a deputy clerk of the U.S. Court of Appeals for the Fourth Circuit," which included seven sworn criminal charges and Breedlove's supporting affidavit of facts entitled, *Affidavit of Kendall H. Breedlove, Appellant, as to Events of October 21, 1998, at the Clerk's Office of the U.S. Court of Appeals for the Fourth Circuit*.

29. On November 6, 1998, Petitioner Breedlove filed *Appellant's Motion for Judicial Notice, In Accordance with Local Rule 40(d), As Ancillary to the Filing of an Application for Writ of Certiorari to the U.S. Supreme Court*, dated November 6, 1998 (filed in combined docket nos. 98-1063 and 98-1064), which incorporated Breedlove's November 5, 1998, letter to Chief Judge Wilkinson, and its enclosed criminal charges, into the record, and moved the Court to take judicial notice of the letter, the charges, and the supporting *affidavit*. (See Exhibit 8, hereof.)

30. On November 20, 1998, a *per curiam* order (see Exhibit 3, hereof) entered by the Clerk, Patricia S. Connor, "For the

Court - By Direction," sets forth misrepresentation of material fact, in that the order:

(a) **failed to state and thus conceals** the material fact that Petitioner filed *Appellant's [Breedlove's] Motion for Judicial Notice, in accordance with Local Rule 40(d), as Ancillary to the Filing of an Application for Writ of Certiorari to the U.S. Supreme Court*, dated November 6, 1998, which Breedlove noticed by his *Praecipe and Notice* for ruling on the written pleadings without oral argument on November 20, 1998 (see Exhibit 7, hereof);

(b) **failed to set forth** that Petitioner's *motion for judicial notice* requested the Fourth Circuit Court to take judicial notice of:

(1) Breedlove's November 5, 1998, letter to the Honorable J. Harvie Wilkinson, III, Chief Judge of the Fourth Circuit, subject: "Criminal charges lodged against the Clerk of the Court and a deputy clerk of the U.S. Court of Appeals for the Fourth Circuit;"

(2) the list of sworn charges, attested to under oath on November 4, 1998, setting forth a list of violations of Title 18 of the United States Code by officers or employees of the United States, and particularly of the Fourth Circuit Court; and

(3) the copy of Breedlove's *affidavit*, executed October 31, 1998, concerning the results of Breedlove's examination of Fourth Circuit Court records on October 21, 1998, which *affidavit* was offered in support of the list of charges; and

(c) **failed to rule on** or to enter dispositive order as to Petitioner's *motion for judicial notice*, dated November 6, 1998, and thus conceals by omission the material fact of the November 6, 1998, motion's existence.

31. On December 2, 1998, Petitioner Breedlove sent a second letter to the Honorable J. Harvie Wilkinson, III, Chief Judge of the Fourth Circuit, double-enveloped and marked "For eyes only," subject, "Criminal charges lodged against the Clerk of the Court, the Deputy Clerk of the Court, and a deputy

clerk of the U.S. District Court for the Western District of Virginia, Harrisonburg Division," which included 19 sworn criminal charges and Breedlove's two supporting *affidavits* of facts and referenced Breedlove's 24-page memorandum to correct the record (with 35-page appendix of documentary support), dated July 8, 1996, and sworn July 1, 1998.

32. As of December 8, 1998, Breedlove has had no response from Chief Judge Wilkinson to Breedlove's letters of November 5, 1998, and December 2, 1998.

Exhibit 20 List of Criminal Charges

Violations of Title 18 of the United States Code by persons who are officers or employees of the United States

Charges lodged against the Honorable James H. Michael, Jr., Senior District Judge, U.S. District Court for the Western District of Virginia—

Making false statements, in violation of 18 USC §1001:

COUNT I: As a federal court appellant and United States citizen, upon information and belief, under oath, I, Kendall H. Breedlove (hereinafter "Breedlove"), charge and accuse the Honorable James H. Michael, Jr., a Senior District Judge for the U.S. District Court for the Western District of Virginia, with commiting the crime of falsification or covering-up of material fact, in violation of 18 USC §1001, in that on or about November 13, 1997, at the offices of the U.S. District Court for the Western District of Virginia in Charlottesville, Virginia, said James H. Michael, Jr., in a matter within the jurisdiction of a department or agency on the United States — particularly within the jurisdiction of the U.S. District Court for the Western District of Virginia — did knowingly and willfully falsify, conceal, or cover up by one or more tricks, schemes, or devices a material fact, to-wit:

> the material fact of the allegation set forth within Breedlove's June 27, 1997, Complaint, in *Breedlove v. Sky Bryce Association, Inc., et al* (W.D. Va. civil action no. 97-0041-H) in Count I, paragraph 7, at page 24 (and restated within Counts II and III) that Defendants exercised **lawfully** the right or privilege created by the Commonwealth of Virginia in Virginia Code §55-516 to create Virginia property owners association liens against Breedlove and Breedlove's properties —

and made one or more false, fictitious or fraudulent statements or representations, or made or used any false writing or document — particularly, made by him in his November 13, 1997, *memorandumopinion*— knowing the same to contain any false, fictitious or fraudulent statement or entry, particularly:

> the false written statement or representation, to-wit: "The instant case is virtually identical to that brought by plaintiff in *Breedlove v. Mihalik, et al*, Civil Action No. 95-0055-H. (W.D. Va. July 1, 1996) (Michael, J.)," set forth in note 1 of Judge Michael's *memorandumopinion* dated November 13, 1997, in *Breedlove v. Sky Bryce Association, Inc., et al*[32]

Employing false statements, in violation of 18 USC §1001:

COUNT II: As a federal court appellant and United States citizen, upon information and belief, under oath, I, Kendall H. Breedlove (hereinafter "Breedlove"), charge and accuse the Honorable James H. Michael, Jr., a Senior District Judge for the U.S. District Court for the Western District of Virginia, with commiting the crime of falsification or covering-up of material fact, in violation of 18 USC §1001, in that on or about November 13, 1997, at the offices of the U.S. District Court for the Western District of Virginia in Charlottesville, Virginia, said James H. Michael, Jr., in a matter within the jurisdiction of a department or agency on the United States — particularly within the jurisdiction of the U.S. District Court for the Western District of Virginia — did knowingly and willfully falsify, conceal, or cover up by one or more tricks, schemes, or devices a material fact, to-wit:

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[32] This statement, in conjunction with the trial judge's reasoning in Section II B, "Plaintiff's Claims Under 42 U.S.C. §1983," of the *memorandum opinion* concealed the material fact of a material distinction between the two cases under appeal: the *Sky Bryce* case alleges that the defendants employed 1996 Virginia property owner association liens ***lawfully***, while the *Mihalik* case alleges that the defendants employed 1994 Virginia property owner association liens ***unlawfully***. Other material distinctions between the two cases are: (1) different defendants, (2) different liens complained of, from times two years apart, and (3) the earlier 1994 liens made claims for more than a single year's association dues, contrary to Virginia Code §55-516, while the later 1996 liens made claim for only a single year's association dues, in conformance with Virginia Code §55-516.

> the material fact of the allegation set forth within Breedlove's June 27, 1997, *Complaint*, in ***Breedlove v. Sky Bryce Association, Inc., et al.*** (W.D. Va. civil action no. 97-0041-H) in Count I, paragraph 7, at page 24 (and restated within Counts II and III) that Defendants exercised ***lawfully*** the right or privilege created by the Commonwealth of Virginia in Virginia Code §55-516 to create Virginia property owners association liens against Breedlove and Breedlove's properties —

and made one or more false, fictitious or fraudulent statements or representations, or made or used any false writing or document, particularly:

> employed the false November 13, 1997, *memorandum opinion* as though it were true, as basis for the entry of Judge Michael's *dismissal order*, dated November 13, 1997, which *dismissal order* used and referenced the reasons stated in the "accompanying Memorandum Opinion" to dismiss Breedlove's case in its entirety, without ruling upon the constitutional challenge to the Virginia property owners association lien law —

knowing the same November 13, 1997, *memorandum opinion* to contain any false, fictitious or fraudulent statement or entry, particularly:

> the false written statement or representation, to-wit: "The instant case is virtually identical to that brought by plaintiff in ***Breedlove v. Mihalik, et al.***, Civil Action No. 95-0055-H. (W.D. Va. July 1, 1996) (Michael, J.)," set forth in note 1 of Judge Michael's *memorandum opinion* dated November 13, 1997, in ***Breedlove v. Sky Bryce Association, Inc., et al.***[33]

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[33] Footnote from preceding page A74 restated here.

Misprision of felony, in violation of 18 USC §4:

COUNT III: As a federal court appellant and United States citizen, upon information and belief, under oath, I, Kendall H. Breedlove (hereinafter "Breedlove"), charge and accuse the Honorable James H. Michael, Jr., a Senior District Judge for the U.S. District Court for the Western District of Virginia, with commiting the crime of misprision of felony, in violation of 18 USC §4, in that on or about July 11, 1996, and subsequently, at the offices of the U.S. District Court for the Western District of Virginia in Charlottesville, Virginia:

> — upon the receipt of Breedlove's 24-page memorandum with 35-page appendix of evidentiary details, entitled *Plaintiff's memorandum to correct the Court's record from inadvertent errors and from errors introduced by willful civil rights' violations,* dated July 8, 1996, sent to Judge Michael's personal and judicial attention by certified mail # P 288-151-798, and signed for by "CS Tomlin," acknowledging receipt on July 11, 1996 — [34]

said James H. Michael, Jr., having knowledge of the actual commission of a felony cognizable by a court of the United States:

> — in particular, having actual knowledge by Breedlove's charges lodged in Breedlove's July 8, 1996, *memorandum* against U.S. Magistrate Judge B. Waugh

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[34] During a hearing, held June 21, 1996, on objections to the Magistrate's December 27, 1995, ***Report and Recommendation,*** Petitioner Breedlove informed the Honorable James H. Michael, Jr., in open court, that in Breedlove's opinion the official record of the Court failed to present either fairly or accurately the pleadings filed in the matter of ***Breedlove v. Mihalik, et al.***, and the correct filing dates thereof.

Judge Michael directed Breedlove that if Breedlove had a specific complaint or complaints, that Breedlove was to file a memorandum with the Clerk of the Court detailing such complaint. Breedlove informed Judge Michael that Breedlove did, indeed, have specific complaints and would file the memorandum, as directed. Breedlove's July 8, 1996, ***memorandum*** was filed in response to Judge Michael's direction. Subsequent examinations of the record by Breedlove disclosed that no steps of any kind were taken to make any corrections of the record. Judge Michael's December 12, 1997, ***order*** denying rehearing failed to make any reference (1) to Breedlove's complaints about the court records or (2) to Breedlove's July 8, 1996, ***memorandum***.

> Crigler and Clerk of the Court Morgan E. Scott, Jr., for their conspiracy against the rights of citizens, in violation of 18 USC §241; and against U.S. Magistrate Judge B. Waugh Crigler (either by himself or aided and abetted by Clerk of the Court Morgan E. Scott, Jr.) for his concealment, removal, or destruction of an official federal court record, in violation of 18 USC §2071, particularly the record which was Breedlove's "Complainant's Exhibit A, Application of Updated Doehr-version of the Three-Part Mathews Test," tendered to and accepted by Magistrate Crigler in open court on November 2, 1995, —

concealed and did not as soon as possible make known the same to some judge or other person in civil authority under the United States:

> in particular, Judge Michael concealed and failed to make known the criminal charges:
>
> (1) by failing willfully to cause the correction of the U.S. District Court's records, which would have highlighted the crimes charged;
>
> (2) by abrogating willfully his supervisory responsibilities over the officers and employees of the U.S. District Court for the Western District of Virginia;
>
> (3) by entering an *order* dated December 12, 1997, in ***Breedlove v. Mihalik, et al.***, (W.D. Va. civil action no. 95-0055-H), denying Breedlove's July 11, 1996, *motion to rehear* (received at the Court on July 15, 1996) in which *order* Judge Michael (a) was silent as to the criminal charges lodged by Breedlove, thus concealing those charges from the U.S. Court of Appeals for the Fourth Circuit (to which federal appeals court the case was appealed on January 8, 1998); and (b) made no affirmative representation in his December 12, 1997, *order* that the criminal charges had been made known or turned over to the Federal Bureau of Investigation, or to

the U.S. Department or Justice, or to the United States Attorney, for investigation; and

(4) by delaying the entry of Judge Michael's *order* denying rehearing for 18 months, from July 15, 1996, until December 12, 1997, thus holding the *Mihalik* case in judicial limbo and preventing Breedlove's appeal to the U.S. Court of Appeals for the Fourth Circuit (and Breedlove's criminal charges) from being considered by that Court as soon as would otherwise have been possible.

Conspiracy against the rights of citizens, in violation of 18 USC §241:

COUNT IV: As a federal court appellant and United States citizen, upon information and belief, under oath, I, Kendall H. Breedlove (hereinafter "Breedlove"), charge and accuse the Honorable James H. Michael, Jr., a Senior District Judge for the U.S. District Court for the Western District of Virginia, in his individual capacity, not in his judicial capacity, with commiting the crime of conspiracy against the rights of citizens, in violation of 18 USC §241, in that on or about June 27, 1995, and subsequently, James H. Michael, Jr., and one or more persons conspired to injure, oppress, threaten, or itimidate a citizen — particularly to oppress Breedlove, a United States citizen — in the free exercise or enjoyment of one or more rights or privileges secured to him by the Constitution or laws of the United States, particularly:

the right of Breedlove to be a witness in a federal court proceeding, secured to him by the Constitution.

The following is set forth as particularization of the charge:

The accuseds, including James H. Michael, Jr., in his individual capacity, had a meeting of minds as to their conspired purpose of implementing a pattern of abuse infringing or abridging that above-stated right by means of officers and employees of the United States and of federal courts interfering willfully, wrongfully, unlawfully, corruptly, and feloniously with Breedlove's litigation before the U.S. District Court for the Western District of Virginia and before the U.S. Court of Appeals for the Fourth Circuit, in order: (1) to cause dismissal of Breedlove's litigation wrongfully; (2) to prevent trial on the merits, at which trial Breedlove would have testified in his own behalf as a witness; and (3) upon Breedlove's appeal, wrongfully to prevent reversal and remand by the appellate court for trial at the federal district court.

The accused, and James H. Michael, Jr., in his judicial capacity, implemented this conspiracy through one or more overt acts interfering with Breedlove's litigation.

Conspiracy to commit offenses against the United States or to defraud United States courts, in violation of 18 USC §371:

COUNT V: As a federal court appellant and United States citizen, upon information and belief, under oath, I, Kendall H. Breedlove (hereinafter "Breedlove"), charge and accuse the Honorable James H. Michael, Jr., a Senior District Judge for the U.S. District Court for the Western District of Virginia, with commiting the crime of conspiracy to commit offenses against the United States or to defraud United States courts, in violation of 18 USC §371, in that on or about various dates in 1996 and 1997, set forth below, James H. Michael, Jr., a Senior District Judge, conspired with B. Waugh Crigler, a U.S. Magistrate Judge, and Morgan E. Scott, Jr., Clerk of the Court for the Western District of Virginia, in their individual capacities, and with *John Doe* (person or persons unknown at present), either to commit one or more offense against the United States — particularly, the offense of misprision of felony, in violation of 18 USC §4 — or to defraud the United States, or any agency thereof — particularly, the U.S. Court of Appeals for the Fourth Circuit and the U.S. Supreme Court — in any manner or for any purpose, to-wit:

— particularly, for the purpose of preventing federal constitutional review of the Virginia property owners association lien law (Virginia Code §55-514 through §55-516) which is repugnant to the Fourteenth Amendment of the United States Constitution and of maintaining that Virginia lien law enforceable, even though the law denies Constitutional due process to lienees and contravenes the holding of the U.S. Supreme Court in *Connecticut v. Doehr*, (501 U.S. 1, 1991) —

and one or more of such persons performed one or more acts to effect the object of the conspiracy, particularly:

OVERT ACT 1: On or about November 2, 1995, Magistrate B. Waugh Crigler after accepting in open court the 10-page "Complainant's [Breedlove's] Exhibit A, Application of Updated *Doehr*-version of the Three-Part *Mathews* Test," dated November 2, 1995, and stating that Magistrate Crigler would have the exhibit added to the record, caused "Complainant's Exhibit A" to be concealed, removed, or destroyed from the case file and not docketed in the *civil docket summary*. Details of this overt act are set forth in the 21-page (with 35 pages of supporting appendix documentation) ***Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Viuolations***, dated July 8, 1996, in ***Breedlove v. Mihalik, et al.***, at pages 3-8, therof.[35]

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[35] ***Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Violations***, dated July 8, 1996, was incorporated by reference and **sworn to as to its facts**, in ***Appellant's*** [Breedlove's] ***Sworn Motion for the Fourth Circuit Court of Appeals To Cause the Correction and the Certification of Each of the False, Tampered, Incomplete, Uncertified Records on Appeal from the Federal District Court, in Each of the Two Instant Appeals***, dated July 1, 1998, in paragraph 9, at page 7 thereof, and *affidavit* attached, executed July 1, 1998.

The missing exhibit — Complainant's Exhibit A — set forth an application by Petitioner to the Virginia property owners association lien law of the updated *Doehr*-version of the three-part *Mathews* test set forth by the U.S. Supreme Court for testing the constitutionality of a State statute in the context of private-party-instituted deprivation of constitutionally-protected right. Petitioner's analysis and conclusion — that the Virginia property owners association lien law was unconstitutional — ran contrary to the purported constitutionality analysis developed and set forth by Magistrate Crigler in the Magistrate's December 27, 1995, ***Report and Recommendation***.

OVERT ACT 2: On or shortly after November 2, 1995, Clerk of the Court Morgan E. Scott, Jr., caused the "Complainant's Exhibit A" not to be docketed in the civil docket summary for the *Mihalik* case, as demonstrated by the *civil docket summaries* of May 22, 1996 3:39 pm and June 21, 1996 2:42 pm in the *Mihalik* case (reproduced as Exhibits 2 and 3 to *Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Violations*, dated July 8, 1996, in *Breedlove v. Mihalik, et al.*, at pages A3-A8, thereof). This overt act occurred even though the Clerk knew or should have known of the acceptance into the record of "Complainant's Exhibit A," through the courtroom deputy and official court reporter, J. Turner, who is a member of the Clerk's staff, and even though there is a docket entry dated 11/2/95 in the *civil docket summary* for a "Motion hearing" held by Magistrate Crigler on November 2, 1995, which cites J. Turner's audio tape recording of the oral proceedings on tape 3, index 0-1324.

OVERT ACT 3: On January 11, 1996, deputy clerk Dee Sims recorded in the civil docket summary for the *Mihalik* case, the receipt of timely-filed *Plaintiff's* [Breedlove's] *Supplementary Memorandum in Opposition to the Magistrate's Report and Recommendation*, dated January 6, 1996, on a date (January 11, 1996) creating the appearance of Breedlove's *supplemental memorandum* being untimely filed and with the docket entry failing to include, thus concealing, the January 6, 1996, service date and filing by certified mail and the supplementary nature of Breedlove's January 6, 1996, *supplementary memorandum*. Details of this overt act are set forth in *Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Viuolations*, dated July 8, 1996, in *Breedlove v. Mihalik, et al.*, at pages 8-12 thereof, and sworn by *affidavit* executed July 1, 1998.

OVERT ACT 4: On January 17, 1996, deputy clerk Dee Sims recorded in the civil docket summary for the *Mihalik* case, the receipt of timely-filed *Plaintiff's* [Breedlove's] *Memoran-*

Magistrate Crigler's constitutionality analysis was not accepted by District Judge Michael, who put forth no constitutionality analysis of his own.

dum in Opposition to the Magistrate's Report and Recommendation, dated January 5, 1996, on a date (January 17, 1996) creating the appearance of Breedlove's *memorandum* being untimely filed and with the docket entry failing to include, thus concealing, the January 5, 1996, service date and filing by certified mail of Breedlove's January 5, 1996, *memorandum*. Details of this overt act are set forth in *Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and From Errors Introduced by Willful Civil Rights' Viuolations*, dated July 8, 1996, in *Breedlove v. Mihalik, et al.*, at pages 8-12 thereof, and sworn by *affidavit* executed July 1, 1998.

OVERT ACT 5: On June 4, 1996, deputy clerk P. Hensley received Breedlove's two June 3, 1996, motions and June 3, 1996, *praecipe and notice*. Breedlove had noticed these two motions for ruling without oral argument on June 14, 1996, by *praecipe and notice*, dated and served June 3, 1996, and filed by certified mail # P 310-160-667, with green return receipt signed for as acknowledging receipt at the federal district court on June 4, 1996, by P. Hensley.

A recording deputy clerk, with the initials "dh" made entries, dated 6/4/96, in the *civil docket summary* in the *Mihalik* case, for each of Breedlove's two June 3, 1996, motions; however, deputy clerk "dh" made no entry for the receipt on June 4, 1996, of Breedlove's *praecipe and notice* for these two June 3, 1996, *motions*, for ruling on June 14, 1996. The recording deputy clerk, "dh," failed to make entry in the *civil docket summary* scheduling the June 14, 1996, ruling or hearing date. These *civil docket summary* details are demonstrated in the *civil docket summary* as of January 29, 1998 9:13 am, transmitted with the record on appeal to the Fourth Circuit Court by deputy clerk D. Sims, of the federal district court.

OVERT ACT 6: On June 14, 1996, District Judge James H. Michael, Jr., failed to rule upon or enter any dispositive order subsequently for two motions: (1) *Plaintiff's* [Breedlove's] *Motion for Judicial Notice: (a) of Plaintiff's Two Memoranda in Opposition to Defendants' Motion to Dismiss; (b) of Transcript of November 2, 1995, Hearing; (c) of Exhibit Filed in Open Court on November 2, 1995; and (d) of Plaintiff's Two*

Memoranda Objecting Timely to the Magistrate's Report and Recommendation, dated June 3, 1996; and (2) *Plaintiff's* [Breedlove's] *Motion for District Judge's De Novo Ruling, pursuant to 28 USC §636(b)(1), on Magistrate's Report and Recommendation and Plaintiff's Objections Thereto*, dated June 3, 1996. This failure to rule is documented through absence of disposition for these two motions in the *dismissal order* of July 1, 1996, and in the *order* denying rehearing, dated December 12, 1997. There were no *orders* in the *Mihalik* case, other than these two, subsequent to the June 14, 1996, noticed date for ruling on these two motions.

OVERT ACT 7: On July 1, 1996, District Judge James H. Michael, Jr., entered *dismissal order* in the *Mihalik* case, dismissing the case in its entirety, (1) prior to the Court resolving Breedlove's stated complaint in open court on June 21, 1996, that the official record failed to present either fairly or accurately the pleadings filed or the dates of their filings; (2) prior to the Court receiving Breedlove's memorandum to correct the record, filed response to Judge Michael's direction in open court on June 21, 1996, to file such a memorandum; and (3) without ruling upon *Plaintiff's Motion for Judicial Notice*, dated June 3, 1996, and noticed for ruling June 14, 1996.

Judge Michael's dismissal of the *Mihalik* case, partially for plaintiff having pleaded the defendants' misapplication of the Virginia property owners associaion lien law — without ruling on the constitutionality of the Virginia property owners association lien law challenged therein, which he had himself certified as a constitutional challenge on July 11, 1995 — was at variance with Judge Michael's own precedent from *Keystone Builders v. Floor Fashion of Virginia*, 829 F.Supp. 181, 183 (W.D. Va. 1993). In *Keystone*, in a case where the plaintiff had pleaded the misapplication of the Virginia attachment law, Judge Michael dismissed the *Keystone* case as to the defendants, but still ruled on the constitutionality of the Virginia attachment law — adjudicating the Virginia attachment law to be constitutional.

OVERT ACT 8: On or about the period August 28, 1997, to September 4, 1997, in the *Sky Bryce* case, Clerk of the Court Morgan E. Scott, Jr., caused not to be docketed and thus, to be concealed from the record, each of three "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate," executed in the affirmative by each of three defense counsels, consenting to jurisdiction of a U.S. Magistrate Judge of the U.S. District Court for the Western District of Virginia.

OVERT ACT 9: On or about the period August 28, 1997, to September 4, 1997, in the *Sky Bryce* case, Clerk of the Court Morgan E. Scott, Jr., caused the concealment, removal, or destruction of each of three "Notice to Parties of Right to Consent to Jurisdiction of United States Magistrate," executed in the affirmative by each of three defense counsels, of which two forms were dated August 28, 1997, and one form was dated September 2, 1997.

OVERT ACT 10: On October 7, 1997, in open court at a purported "pre-trial conference" in the *Sky Bryce* case, Magistrate B. Waugh Crigler produced a document in open court purported to be the *Complainant's Exhibit A*, dated November 2, 1995, tendered to and accepted by Magistrate Crigler in a November 2, 1995, hearing in the *Mihalik* case, which exhibit had been concealed or removed from the official court record in *Breedlove v. Mihalik*. On October 7, 1997, Magistrate Crigler produced a file said to be the official court case file of *Breedlove v. Mihalik* in open court, displayed the file purportedly as including a document (beyond visual range in open court) purported to be the missing *Complainant's Exhibit A*, dated November 2, 1995. Details of this overt act are set forth in *Plaintiff's* [Breedlove's] *Appeal to the Senior District Judge* [Michael], *as a Federal Civil Right under 28 USC §636(b)(1), of the Magistrate's Order Entered October 10, 1997, and of Magistrate B. Waugh Crigler's Refusal to Recuse Himself on the Basis of Bias, Appearance of Bias, and Criminal Charges Lodged Against Magistrate by Plaintiff in the Instant Case*, dated October 17, 1997, in paragraphs 12 f - g, at pages 8-9 thereof.

OVERT ACT 11: On November 13, 1997, Senior District Judge James H. Michael, Jr., dismissed the *Sky Bryce* case in its entirety — by surprise, one day before a court-scheduled November 14, 1997, hearing on defendants' *motions to dismiss* — failed to hear and denied six of plaintiff's pending motions in the case; and failed to hear, failed to address, and failed to rule upon *Plaintiff's* [Breedlove's] *Appeal to the Senior District Judge*, dated October 17, 1997, which *appeal* itself set forth additional criminal charges against Magistrate Crigler, or referenced previous criminal charges against Magistrate Crigler and/or Clerk of the Court Scott, for:

1. Conspiracy against the rights of citizens, in violation of 18 USC §241;

2. Conspiracy to commit offenses against the United States or to defraud United States courts, in violation of 18 USC §371;

3. Tampering with a witness, victim, or informant, in violation of 18 USC §1512;

4. Concealment, removal, or mutilation [of an official record] generally, in violation of 18 USC §2071; and

5. Misprision of felony, in violation of 18 USC §4.

OVERT ACT 12: On July 21, 1998, the Honorables Paul V. Niemeyer, Clyde H. Hamilton, and Kenneth K. Hall, Circuit Judges of the Fourth Circuit, issued a *memorandum opinion* in which they affirmed the lower court's dismissal, without any reference to the criminal charges against federal district court personnel, brought to their personal attention by Petitioner Breedlove's *informal brief for the appellant*, in Issue 1, at pages 1-3 of the "Attached Supplemental Pages to Informal Brief," dated February 7, 1998, in *Breedlove v. Sky Bryce Association, Inc., et al.*, C.A.4 docket no. 98-1063.

OVERT ACT 13: On September 11, 1998, Patricia S. Connor, Clerk of the Fourth Circuit, issued a *per curiam* order signed by Patricia S. Connor, Clerk of the Fourth Circuit, in which the Fourth Circuit Court denied Petitioner Breedlove's *petition for rehearing in banc*, dated August 4, 1998. In Breedlove's *petition for rehearing in banc*, Breedlove had set forth criminal charges of conspiracy against the rights of citizens, in violation of 18 USC §241, and conspiracy to commit offenses against the United States or to defraud United States courts, in violation or 18 USC §371, in Argument IV, at pages

12-14 thereof. The September 11, 1998, *order* states, "... no member of this Court or the panel [consisting of Circuit Judges Neimeyer, Hamilton, and Hall] requested a poll on the suggestion for rehearing in banc...," even though Breedlove's *petition for rehearing in banc* requested at page 1, "The Petitioner requests rehearing *in banc* and requests that the entire Court be polled."

Intent: For the above-stated charges, the criminal intent of James H. Michael, Jr., is alleged to be demonstrated:

a. by Judge Michael failing on June 14, 1996, to rule on or enter dispositive order subsequently as to Breedlove's noticed, scheduled motion, entitled, "*Plaintiff's Motion For Judicial Notice: (a) of Plaintiff's Two Memoranda in Opposition to Defendants' Motion To Dismiss; (b) of Transcript of November 2, 1995, Hearing; (c) of Exhibit Filed in Open Court on November 2, 1995; and (d) of Plaintiff's Two Memoranda Objecting Timely to the Magistrate's Report And Recommendation,* dated June 3, 1996, and noticed for ruling June 14, 1996, on the written pleadings, without oral argument. Ruling on this motion would have confirmed that the Court had taken judicial notice of Breedlove's pleadings which appeared to have been excluded from consideration unfairly, and would have highlighted the fact of the concealment, removal, or destruction of one or more of Breedlove's pleadings.[36]

b. by Judge Michaels dismissing the *Mihalik* case in July 1, 1996, order, with the case records uncorrected, without waiting for Breedlove to file his *memorandum to correct the Court's records:* (1) after Breedlove had complained in open court on June 21, 1996, that the Court's records failed to present either fairly or accurately the proceedings had before \the federal district court; (2) after Judge Michael had directed Breedlove in open court to file a memorandum with the Clerk of the Court to obtain correction of the record; and (3) after Judge Michael knew or should have known from his Clerk of the Court that Breedlove had purchased court-certified copies of the *civil docket summary* as of June 21, 1996, as preparation for filing the memorandum as directed.

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[36] The June 4, 1996 civil docket summary entry (docket item 17, in the civil docket summary as of January 11, 1998, 10:46 AM, transmitted to the Fourth Circuit Court) concealed the material facts within the title of Breedlove's June 3, 1996, motion and of its material substance.

c. by Judge Michael entering the November 13, 1997, *memorandum opinion* and November 13, 1997, *dismissal order* by surprise — without prior notice and without opportunity for Petitioner to be heard — one day immediately prior to a November 14, 1997, scheduled hearing on the defendants motions to dismiss and on particular motions by Breedlove.

d. by Judge Michael denying six of Breedlove's motions by surprise on November 13, 1997 — without notice and without opportunity for Breedlove to be heard.

e. by Judge Michael failing to rule on or enter dispositive order as to Breedlove's *appeal to the district judge of the Magistrate's October 10, 1997, order* and failing to act on the criminal charges set forth therein against Magistrate Crigler.

f. by Judge Michael denying on December 12, 1997, Breedlove's misdated October [November] 20, 1997, *motion for rehearing of the November 13, 1997, dismissal order* — again without notice and without opportunity for Petitioner to be heard — when Breedlove's *motion for rehearing* set forth:

" c. the federal district court has overlooked both material fact and law in its November 13, 1997, memorandum opinion:

" (1) in that the Court has failed to appreciate or take judicial notice of the pleaded fact in the June 27, 1997, Complaint that Defendants Sky Bryce Association, Inc., and L.E. Hoole employed the two June 28, 1996, liens lawfully, and are not alleged to have misapplied the liens as the November 13, 1997, memorandum opinion purports falsely.

" (2) in that the Court has failed to resolve the issue that the filing of a lien is not a mere ministerial matter, but is a judicial action which seizes and holds the *res*, thereby conferring the Virginia state court's *in rem* jurisdiction to determine the disposition of the liened property. * * * [legal authorities and citations omitted]" [*Motion for Rehearing*, October 20, 1997, paragraphs 1. c (1) and (2), at pages 1-2.]

g. by Judge Michael: (1) failing to observe procedural due process; (2) ignoring Breedlove's statement in the *motion for rehearing*, to-wit: "3. Plaintiff states that Plaintiff will notice this motion for hearing once Plaintiff has completed and filed the Memorandum in support of this motion," [*Motion for Rehearing*, at 5.]; and (3) rushing to judgment — again without notice and without opportunity for Petitioner Breedlove to be heard — and denying Breedlove's *Motion for Rehearing* by surprise on December 12, 1997, without hearing and before Breedlove filed his *memorandum in support* or noticed his motion for hearing.

Kendall H Breedlove

Kendall H. Breedlove

SS:

Commonwealth of Virginia

County of Fairfax, to-wit:

I, Levelyn Landingin, a notary for the County aforesaid, do hereby certify that on the date cited below, Kendall H. Breedlove appeared before me in my State and County aforesaid, made oath before me, and being duly sworn, subscribed his name to the above document and acknowledged the "List of Charges, Violations of Title 18 of the United States Code by persons who are officers or employees of the United States," *ante*:

(1) to have been prepared by him, based upon his personal examination of U.S. District Court for the Western District of Virginia records and record-on-appeal files in C.A.4 docket nos. 98-1063 and 98-1064, (including the *civil docket summary*

as of January 29, 1998 9:13 am in Civil Action No. 95-0055-H, as transmitted to the U.S. Court of Appeals for the Fourth Circuit, and the *civil docket summary* as of January 29, 1998 10:50 am in Civil Action No. 97-0041-H, as transmitted to the U.S. Court of Appeals for the Fourth Circuit), the results of which examinations of records are documented in:

(a) the 24-page (with 35-page documentary appendix) *Plaintiff's Memorandum to Correct the Court's Record from Inadvertent Errors and from Errors Introduced by Willful Civil Rights' Violations*, dated July 8, 1996, in Civil Action No. 95-0055-H, which was sworn July 1, 1998, when incorporated by reference into *Appellant's* [Breedlove's] *Sworn Motion for the Fourth Circuit Court of Appeals To Cause the Correction and the Certification of Each of the False, Tampered, Incomplete, Uncertified Records on Appeal from the Federal District Court in Each of the Two Instant Appeals*, dated July 1, 1998, filed in Breedlove's combined appeals, C.A.4 docket nos. 98-1063 and 98-1064, at paragraph 9, page 7, thereof, and sworn to by the attached affidavit, executed by Breedlove July 1, 1998, swearing to the truth of the factual information;

(b) the "Affidavit of Kendall H. Breedlove, Appellant, as to Events of September 18, 1997, at the U.S. District Court Clerk's Office;" executed September 20, 1997, as to Civil Action No. 97-0041-H;

(c) the "Affidavit of Kendall H. Breedlove, Appellant, as to Events of October 17, 1997, at the U.S. District Court Clerk's Office;" executed October 18, 1997, as to Civil Action No. 97-0041-H;

and (2) to be true to the best of his information and belief.

Given under my hand this 10th day of December, 1998.

Notary Public

My commission expires: 11-30-2002